BENGAL SECRETARIAT LIBRARY

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1874.

WITH INDEX.

VOL. XIII.

Published by the Authority of the Governor General.

CALCUTTA:
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1875.

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1874.

INDEX

TO THE

ABSTRACT OF PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

VOL. XIII.

A.

	Page.
ABSENCE OF MEMBER. Motion by another in consequence of, ...	74
ACT No. XXII OF 1855. See *Port-dues Act Amendment.*	
„ „ I OF 1859. „ *Merchant Shipping Act Amendment.*	
ACT No. X OF 1859, &c., EXPLANATORY BILL.	
Select Committee report presented	12
„ „ „ considered	15
Amendment proposed and adopted	35—6
Bill passed	36
ACT No. XIV OF 1863. See *Act X of* 1859, *&c.*	
„ „ VII OF 1864. „ *Salt Law Amendment.*	
„ „ XXIV OF 1867. „ *Administrator General's Act Amendment.*	
„ „ XXIV OF 1869. „ *Salt Law Amendment.*	
„ „ IV OF 1870. „ *Kulu Sub-division.*	
„ „ IV OF 1872. „ *Panjáb Laws Act Amendment.*	
„ „ VII OF 1872. „ *Burma Courts Act Amendment.*	
„ „ X OF 1872. „ *Criminal Procedure Code Amendment.*	
„ „ XXII OF 1872. „ *Act X of* 1859, *&c.*	
„ „ I OF 1873. „ *Burma Courts Act Amendment.*	
ACTS. See *Regulations.*	
ACTS LOCAL EXTENT BILL.	
Select Committee report presented	211

Page.

ACTS LOCAL EXTENT BILL,—*continued.*
Select Committee report considered 216
Bill passed 225
ADJOURNMENTS. See *Council of the Governor General.*
ADMINISTRATION. See *Probates.*
ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.
Select Committee report *(final)* presented 12
„ „ „ „ considered 38
Amendment proposed and withdrawn ... ... 40—42
Bill passed 43
AMENDMENT OF LAWS. See *Administrator General's Act, Burma Courts Act, Civil Appeals, Criminal Procedure Code, European Vagrancy, Married Women's Property, Merchant Shipping, Native Passenger Ships, Panjáb Laws, Port-dues, Privy Council, Regulations and Acts, Salt Laws.*
AMENDMENTS adopted ... ... 35—36, 94
withdrawn ... ... 40—42
APPEALS. See *Privy Council, Civil Appeals.*
APPELLATE POWERS. See *Kulu Sub-division.*
ASSAM CHIEF COMMISSIONER'S POWERS BILL.
Motion for leave to introduce 14
Introduced and referred to Select Committee 49
Select Committee appointed 50
„ „ report presented 53
„ „ „ considered ... ... 71—4
Consideration of Bill postponed 74
Bill passed 87

B.

BAYLEY, HON'BLE E. C.,
Assam Chief Commissioner's Powers Bill 73, 88
Burma Fisheries Bill 45
European Vagrancy Bill 74, 88, 94
BAYLEY, HON'BLE E. C., appointed to Select Committees 46, 50, 86, 103, 134, 154, 172, 177, 183, 227
BENGAL. See *Civil Appeals.*
BOMBAY REVENUE JURISDICTION BILL.
Motion that, in room of Mr. Inglis, Mr. Dalyell be appointed to Committee 49
Select Committee report (*preliminary*) presentation postponed ... 74
„ „ „ „ presented 95
BRITISH BURMA. See *Burma Courts Act Amendment, Burma Fisheries, Burma Municipalities.*
BURMA COURTS ACT AMENDMENT BILL.
Motion for leave to introduce 102
Introduced and referred to Select Committee 105
Select Committee appointed 134
„ „ added to 232

Page.

BURMA FISHERIES BILL.
Motion for leave to introduce 12
Introduced and referred to Select Committee 43
Motion to publish Bill 46
Select Committee appointed ... ... *ib.*
„ „ report presentation postponed 108

BURMA MUNICIPALITIES BILL.
Select Committee report presented 52
„ „ „ considered 69
Bill passed 71

C.

CAMPBELL, HON'BLE SIR G. See *Lieutenant Governor of Bengal.*

CHIEF COMMISSIONER. See *Assam.*

CHIEF COMMISSIONER'S POWERS *(Sylhet)* BILL.
Motion for leave to introduce 168
Introduction postponed 180
Introduced 185
Application for suspension of rules 188
Bill passed ... ... *ib.*

CIVIL APPEALS BILL.
Motion for leave to introduce 155
Introduced and referred to Select Committee 173
Motion to publish Bill 177
„ to appoint Select Committee ... ... *ib.*
Select Committee appointed 183
„ „ report presented 193

CIVIL COURTS. See *Bombay Revenue Jurisdiction, Privy Council Appeals*

COASTING STEAMERS. See *Native Passenger Ships.*

CODE OF CRIMINAL PROCEDURE. See *Criminal Procedure Code*

COLVIN, HON'BLE B. D.
Took his seat as an additional member 11
Port-dues Act Amendment Bill 111
Salt Law Amendment Bill 118

COLVIN, HON'BLE B. D., appointed to Select Committee 134

COMMANDER-IN-CHIEF. See *Napier.*

CONSOLIDATION OF LAWS. See *Administrator General's Act, Burma Courts, European Vagrancy, Native Passenger Ships, Port-dues, Privy Council, Regulations and Acts.*

COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS.
Meetings of, ... 1, 11, 15, 47, 51, 69, 87, 105, 135, 155, 173, 185, 189, 213, 229, 237
Adjournments of, ... 10, 14, 46, 50, 67, 86, 103, 134, 154, 172, 183, 188, 211, 227, 235, 239

COURTS. See *Burma Courts, Civil Courts.*

CRIMINAL PROCEDURE. See *High Courts, Presidency Police.*

Page.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.
Select Committee report presented 105
" " " considered 135
Bill passed 139
CUSTOMS. See *Inland Customs.*

D.

DALYELL, HON'BLE R. A.,
Burma Fisheries Bill 44
Burma Municipalities Bill 70
Indian Law Reports Bill 79
Salt Law Amendment Bill 119
DALYELL, HON'BLE, R. A., appointed to Select Committees 11, 14, 46, 49, 50, 86, 103, 211, 226, 227, 232, 235, 239.
DEBATES IN COUNCIL.
Act X of 1859, &c., Explanatory Bill ... ...15—35, 36—7
Acts Local Extent *(Laws Local Extent)* Bill ... ... 216—24, 225
Administrator General's Act Amendment Bill ... ... 38—42
Assam Chief Commissioner's Powers Bill ... ... 71—4, 87, 88
Burma Fisheries Bill .. .. 43—6
Burma Municipalities Bill ... ... 69—71
Chief Commissioner's Powers (*Sylhet*) Bill ... ... 185—88
Civil Appeals Bill ... . 177—80, 193—210
European Vagrancy Bill ... ... 88—94
Indian Law Reports Bill ... ... 74—86
Majority Bill ... ... 126—34, 140—54
Obsolete Enactments Repeal Bill ... . 1—9
Panjáb Laws Act Amendment Bill ... ... 233—34
Port-dues Act Amendment Bill ... ... 108—11
Presidency Police Magistrates Bill ... ... 99—101
Regulations and Acts Local Extent (*Scheduled Districts*) Bill ... 216—24, 225
Salt Law Amendment Bill ... ... 112—24, 124—26
DECREES. See *Sheriffs.*
DISTRESSES (*Presidency Towns*) BILL.
Introduced and referred to Select Committee 169
Select Committee appointed 172
" " report presented 211
" " " consideration postponed 214
DUTIES. See *Inland Customs.*

E.

ELLIS, HON'BLE B. H.,
Bombay Revenue Jurisdiction Bill 95
Inland Customs Bill 229, 231
Salt Law Amendment Bill 112, 124

Page.

ELLIS, HON'BLE B. H., appointed to Select Committees *46, 103, 154, 177, 183, 235

ENACTMENTS. See *Obsolete Enactments.*

ENLISTMENT. See *Foreign Enlistment.*

EUROPEAN BRITISH MINORS' BILL.

Motion for leave to introduce 169
Introduced and referred to Select Committee 181
Motion to publish Bill 182
Select Committee appointed 183
„ „ report presented 210
„ „ „ considered 213
Bill passed 214

EUROPEAN VAGRANCY BILL.

Select Committee report presented 74
„ „ „ considered 88
Amendment proposed and adopted 94
Application for suspension of rules ... ... *ib.*
Suspension of rules not necessary ... ... *ib*
Bill passed ... ... *ib.*

F.

FISHERIES. See *Burma Fisheries.*

FOREIGN ENLISTMENT BILL.

Select Committee report presented 38
„ „ „ considered 48
Bill passed 49

G.

GOVERNOR GENERAL (*Right Hon'ble Baron Northbrook*).

Act X of 1859, &c., Explanatory Bill 36
Acts Local Extent (*Laws Local Extent*) Bill 224
Administrator General's Act Amendment Bill 42
Assam Chief Commissioner's Powers Bill 74
Chief Commissioner's Powers (*Sylhet*) Bill 186, 188
Civil Appeals Bill 210
European Vagrancy Bill 94
Indian Law Reports Bill 85
Obsolete Enactments Repeal Bill 9
Presidency Police Magistrates Bill 99
Regulations and Acts Local Extent (*Scheduled Districts*) Bill ... 224
Salt Law Amendment Bill 112, 124

GUARDIANSHIP. See *European British Minors.*

H.

Page.

HIGH COURTS. *See Sheriffs.*

HIGH COURTS CRIMINAL PROCEDURE BILL.

Select Committee report presented 97

„ „ added to 226

HOBHOUSE, HON'BLE ARTHUR,

Act X of 1859, &c., Explanatory Bill 12, 15, 35, 36

Acts Local Extent (*Laws Local Extent*) Bill 211, 216, 224, 225

Administrator General's Act Amendment Bill ... 12, 38, 41, 42, 43

Assam Chief Commissioner's Powers Bill 14, 49, 53, 71, 73, 87

Bombay Revenue Jurisdiction Bill 49, 74

Burma Courts Act Amendment Bill 102, 105, 232

Burma Fisheries Bill 12, 43, 46, 108

Burma Municipalities Bill 52, 69, 71

Chief Commissioner's Powers (*Sylhet*) Bill 168, 180, 185, 188

Civil Appeals Bill 155, 173, 177, 179, 193

Criminal Procedure Code Amendment Bill 105, 135, 139

Distresses (*Presidency Towns*) Bill 169, 172, 211, 214

European British Minors' Bill 169, 181, 182, 210, 213, 214

European Vagrancy Bill 93

Foreign Enlistment Bill 38, 48, 49

High Courts Criminal Procedure Bill 97, 226

Indian Law Reports Bill 54, 74, 82, 225

Kulu Sub-division (*Panjáb*) Bill 9, 13, 14, 49, 51

Majority Bill 132, 143

Married Women's Property Bill 37, 47, 48

Merchant Shipping Act Amendment Bill 134, 172, 211

Native Passenger Ships and Coasting Steamers Bill 211, 226

Obsolete Enactments Repeal Bill 1, 11, 211, 225, 231, 232

Panjáb Laws Act Amendment Bill 233, 237, 238

Port-dues Act Amendment Bill ... 66, 108, 111, 210, 226, 232

Presidency Police Magistrates' Bill 99, 101

Privy Council Appeals Bill 51, 69

Probates and Letters of Administration Bill 189, 226

Regulations and Acts Local Extent (*Scheduled Districts*) Bill 211, 216, 224, 225

Sheriffs' Bill 169, 172

Statutes (*Presidency Towns*) Bill 169, 172

HOBHOUSE, HON'BLE ARTHUR, appointed to Select Committees 11, 14, 46, 50, 86, 103, 134, 154, 172, 177, 183, 227, 235, 239

I.

INDIAN LAW REPORTS BILL.

Motion for leave to introduce 54

Introduced and referred to Select Committee 74

Page.

INDIAN LAW REPORTS BILL,—*continued*
Select Committee appointed 86
„ „ report presentation postponed 225
INGLIS, HON'BLE J. F. D.,
Act X of 1859, &c., Explanatory Bill 28
Appointment to Select Committee in room of, ... 49
INGLIS, HON'BLE J. F. D., appointed to Select Committees 11, 14, 134, 172, 177, 183, 227, 232, 235, 239
INLAND CUSTOMS BILL.
Introduced and referred to Select Committee 229
Motion to publish Bill 231
Select Committee appointed 235

J.

JUDGMENTS. See *Privy Council.*
JURISDICTION. See *Bombay Revenue Jurisdiction.*

K.

KULU SUB-DIVISION (*Panjáb*) BILL.
Motion for leave to introduce 9
Introduced and referred to Select Committee 13
Motion to publish Bill 14
Select Committee appointed ... ... *ib.*
„ „ report presented 49
„ „ „ considered 51
Bill passed ... ... *ib.*

L.

LAW REPORTS. See *Indian.*
LAWS. See *Panjáb Laws Act Amendment.*
LAWS LOCAL EXTENT. See *Acts Local Extent, Regulations and Acts Local Extent.*
LETTERS OF ADMINISTRATION. See *Probates.*
LIABILITIES. See *Native Soldiers.*
LIEUTENANT GOVERNOR OF BENGAL (*Hon'ble Sir G. Campbell.*)
Assam Chief Commissioner's Powers Bill 71, 87
European Vagrancy Bill 92
Indian Law Reports Bill 79
Presidency Police Magistrates' Bill 99
LIEUTENANT GOVERNOR OF BENGAL (*Hon'ble Sir R. Temple.*)
Acts Local Extent (*Laws Local Extent*) Bill 224
Panjáb Laws Act Amendment Bill 234
Regulations and Acts Local Extent (*Scheduled Districts*) Bill ... 224
LOCAL EXTENT. See *Acts, Regulations and Acts.*

M

	Page.
MAGISTRATES. See *Presidency Police.*	
MAHÁRÁJÁ. See *Vizianagram.*	
MAJORITY BILL.	
Motion for leave to introduce	126
Introduced and referred to Select Committee...	140
Motion to publish Bill	154
Select Committee appointed	*ib.*
MARRIED WOMEN'S PROPERTY BILL.	
Select Committee report presented	37
„ „ „ considered	47
Bill passed	48
MEETINGS. See *Council of the Governor General.*	
MERCHANT SHIPPING ACT AMENDMENT BILL.	
Select Committee added to	134
„ „ report presentation postponed	172
„ „ added to	211
MINORS. See *European British Minors.*	
MOTIONS postponed	74, 180
withdrawn	40—42
MUIR, HON'BLE SIR W.,	
Acts Local Extent (*Laws Local Extent*) Bill	224, 225
Regulations and Acts Local Extent (*Scheduled Districts*) Bill ...	224, 225
MUNICIPALITIES. See *Burma Municipalities.*	

N

NAPIER OF MAGDÁLA, HIS EXCELLENCY LORD,	
Present in Council	173
NATIVE PASSENGER SHIPS CONSOLIDATION BILL.	
Select Committee added to	211, 226
NATIVE SOLDIERS' RIGHTS AND LIABILITIES BILL.	
Motion for leave to introduce	232
Introduced and referred to Select Committee	238
Select Committee appointed	239
NEW MEMBER.	
Hon'ble B. D. Colvin took his seat	11
NORMAN, MAJOR GENERAL THE HON'BLE SIR H. W.,	
Assam Chief Commissioner's Powers Bill	73
Native Soldiers' rights and liabilities Bill	232, 238
NORMAN, MAJOR GENERAL THE HON'BLE SIR H. W., appointed to Select Committees	134, 239

O

OBSOLETE ENACTMENTS REPEAL BILL. Page.

Introduced and referred to Select Committee... 1
Select Committee appointed 11
report presented 211
" " " (*supplementary*) presented 225
" " reports considered 231
Bill passed 232

P.

PANJÁB. See *European British Minors, Kulu Sub-division.*

PANJÁB LAWS ACT AMENDMENT BILL.

Motion for leave to introduce 233
Introduced and referred to Select Committee... 237
Motion to publish Bill 238
Select Committee appointed 239

PASSENGER SHIPS. See *Native Passenger Ships.*

POLICE. See *Presidency Police Magistrates.*

PORT-DUES ACT AMENDMENT BILL.

Motion for leave to introduce 66
Introduced and referred to Select Committee 108
Motion to publish Bill 111
Select Committee appointed 134
" " report presentation postponed 210
" " added to 226
" " report presented 232

POSTPONEMENT of consideration of Assam Chief Commissioner's Powers Bill ... 74
of presentation of Report on Bombay Revenue Jurisdiction Bill 74
Burma Fisheries Bill 108
Merchant Shipping Act Amendment Bill 172
of introduction of Chief Commissioner's Powers (*Sylhet*) Bill ... 180
of presentation of Report on Port-dues Act Amendment Bill ... 210
of consideration of Report on Distresses (*Presidency Towns*) Bill 214
of presentation of Report on Indian Law Reports Bill ... 225

POWERS. See *Assam Chief Commissioner's, Chief Commissioner's.*

PRESIDENCY POLICE MAGISTRATES' BILL.

Motion for leave to introduce 99
Application for suspension of rules ... ... *ib.*
Introduced and referred to Select Committee ... ... *ib.*
Select Committee appointed 103

PRESIDENCY TOWNS. See *Distresses, Statutes.*

PRESIDENT. See *Governor General.*

PRIVY COUNCIL APPEALS BILL.

Select Committee report (*final*) presented 51

Page.

PRIVY COUNCIL APPEALS BILL—*continued.*
Select Committee reports considered 69
Bill passed ... ... *ib.*
PROBATES AND LETTERS OF ADMINISTRATION BILL.
Motion for leave to introduce 189
Introduced and referred to Select Committee... 226
Motion to publish Bill ... ... *ib.*
Select Committee appointed 227
PROCEDURE. See *Criminal Procedure, High Courts.*
PROPERTY. See *Married Women's.*
PUBLICATION OF BILLS.
Burma Fisheries Bill 46
Civil Appeals Bill 177
European British Minors Bill 182
Inland Customs Bill 231
Kulu Sub-division (*Panjáb*) Bill 14
Majority Bill 154
Panjáb Laws Act Amendment Bill 238
Port-dues Act Amendment Bill 111
Probates and Letters of Administration Bill 226

Q.

QUIETING OF TITLES (*N. W. P.*). See *Act X of* 1859, *&c., Explanatory Bill.*

R.

RAMÁNÁTH TAGORE, HON'BLE RÁJÁ,
Administrator General's Act Amendment Bill 40, 42
Civil Appeals Bill 177
Indian Law Reports Bill 78
Majority Bill 142
Salt Law Amendment Bill 118
RAMÁNÁTH TAGORE, HON'BLE RÁJÁ, appointed to Select Committees.. 86, 154, 172, 177, 183, 227
RECRUITING. See *Foreign Enlistment.*
REGULATIONS AND ACTS LOCAL EXTENT (*Scheduled Districts*) BILL.
Select Committee report presented 211
„ „ „ considered 216
Bill passed 225
RENTS. See *Distresses.*
REPEAL. See *Obsolete Enactments.*
REPORTS. See *Indian Law Reports.*
REVENUE JURISDICTION. See *Bombay.*
RIGHTS. See *Native Soldiers.*
RULES FOR THE CONDUCT OF BUSINESS.
Suspension of, unnecessary 94
See *Suspension.*
RURAL POLICE See *Panjáb Laws.*

S.

SALT. See *Inland Customs.* *Page.*

SALT LAW AMENDMENT BILL.

Motion for leave to introduce 112
Application for suspension of rules ... ... *ib.*
Introduced and considered ... ... *ib.*
Bill passed 124

SCHEDULED DISTRICTS. See *Regulations and Acts Local Extent.*

SELECT COMMITTEE.

Additions to, ... 134, 211, 226, 232
Change in, ... 49
Postponement of presentation of report of, ... 74, 108, 172, 210, 225
of consideration of report of, ... 214

SELECT COMMITTEES.	Appointed.	Report presented.	Report considered.
Act X of 1859, &c., Explanatory Bill . . .	...	12	15
Acts Local Extent *(Laws Local Extent)* Bill . .	...	211	216
Administrator General's Act Amendment Bill (*final report*)	...	12	38
Assam Chief Commissioner's Powers Bill . .	50	53	71
Bombay Revenue Jurisdiction Bill (*preliminary report*)	...	95	...
Burma Courts Act Amendment Bill . . .	134	...	...
Burma Fisheries Bill	46	...	...
Burma Municipalities Bill	...	52	69
Civil Appeals Bill	177, 183	193	...
Criminal Procedure Code Amendment Bill . .	...	105	135
Distresses (*Presidency Towns*) Bill	172	211	...
European British Minors Bill	183	210	213
European Vagrancy Bill	...	74	88
Foreign Enlistment Bill	...	38	48
High Courts Criminal Procedure Bill *(preliminary report)*	...	97	...
Indian Law Reports Bill	86	...	...
Inland Customs Bill	235	...	...
Kulu Sub-division (*Panjáb*) Bill	14	49	51
Majority Bill	154	...	...
Married Women's Property Bill	...	37	47
Native Soldiers' Rights and Liabilities Bill . .	239	...	...
Obsolete Enactments Repeal Bill	11	211	231
(supplementary report) .	...	225	
Panjáb Laws Act Amendment Bill . . .	239	...	...
Port-dues Act Amendment Bill	134	232	...
Presidency Police Magistrates' Bill. . . .	103	...	...
Privy Council Appeals Bill (*final report*) . .	...	51	69
Probates and Letters of Administration Bill . .	227	...	...
Regulations and Acts Local Extent *(Scheduled Districts)* Bill	...	211	216
Sheriffs' Bill	172	...	...
Statutes (*Presidency Towns*) Bill	172	...	...

Page.

SHERIFFS' BILL.
Introduced and referred to Select Committee... 169
Select Committee appointed 172
SHIPPING. See *Merchant Shipping.*
SMITH, HON'BLE J. R. BULLEN, appointed to Select Committees 211, 235
SOLDIERS. See *Native Soldiers.*
STATUTES (*Presidency Towns*) BILL.
Introduced and referred to Select Committee 169
Select Committee appointed 172
SUGAR. See *Inland Customs.*
SUSPENSION of Rules for the Conduct of Business 99, 112, 188
application for, ... 94
SUTHERLAND, HON'BLE H. H.,
Burma Fisheries Bill 44
SUTHERLAND, HON'BLE H. H., appointed to Select Committees 46, 226
SYLHET. See *Chief Commissioner's Powers.*

V.

VAGRANCY. See *European Vagrancy.*
VIZIANAGRAM, HIS HIGHNESS THE MAHÁRÁJÁ OF,
Burma Municipalities Bill 71
Majority Bill 126, 140, 154
Salt Law Amendment Bill 123
VIZIANAGRAM, HIS HIGHNESS THE MAHÁRÁJÁ OF, appointed to Select Committee 154

W.

WOMEN. See *Married Women.*

BENGAL SECRETARIAT LIBRARY

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 13th January 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding:*

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble B. H. Ellis.

Major General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

His Highness the Maháráját of Vizianagram, K. C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble R. A. Dályell.

The Hon'ble H. H. Sutherland.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for the repeal of certain obsolete enactments, and moved that it be referred to a Select Committee with instructions to report in a month. He had explained to the Council at the last meeting the object of the Bill and the circumstances which led to its introduction at this time. Of course in a Bill of this kind the enacting part followed the common course, and there was nothing particular in that part of the Bill to explain to the Council. The principle of the Bill was contained in the schedule, and it was in respect to the schedule that he should have some observations to make. He should wish at the same time to remove some of the erroneous impressions which were entertained at our last meeting, respecting the danger which we incurred by sending a Bill of this kind into Committee, and the risk there was of throwing the law into confusion by the enactment of such laws.

The schedule consisted of two main parts. One part related to the Bengal Regulations, and that, as he had explained before, was chiefly the work of Mr. Field: it was an important work; and if we were to pass Bills of this kind at all, we must deal with the Bengal Regulations in the way in which they were dealt with here. The rest of the schedule was not nearly so important.

There were not many items in that part of the schedule which consisted of the total removal of laws from the Statute-book, and not a great many which consisted of the removal of whole sections or parts of Acts. The greatest part of the schedule was concerned with small alterations of the language of the existing Acts, for two purposes. He had taken occasion at a meeting at Simla to explain the two different principles upon which the language of the Acts was altered when the enactments themselves could not be wholly repealed. One principle was as follows: Owing to changes in the law, references to prior Acts and to various extrinsic circumstances became erroneous or senseless. We found repealed enactments spoken of as if in force, or officers named as existing who had ceased to exist. Thus, the reading of Acts was rendered more difficult, and the attention of the reader was apt to be distracted by his meeting with that to which he could not under existing circumstances assign any meaning. So we struck out expressions originally necessary but now incorrect. The other principle was merely the purpose of abbreviation,—of reducing the bulk of the Statute-book to some extent, and making the labours of the reader somewhat lighter.

With regard to the first of these principles, he did not think there was much, if any, difference of opinion in this Council as to the propriety of applying it. With regard to the second, he had read to the Council on a previous occasion some able remarks of the late Mr. Housman who objected to it. Now, there was a difference of opinion about that. It would be for the Council to decide whether this Bill should go to a Select Committee with the approval, expressed or tacit, of that principle, or whether any modifications should be made in it, or any objections raised to it. He had no reason to assign in its favour except what he had assigned before. If he was approaching this subject *de novo*, and if he personally had to revise the Statute-book, he should have doubts which principle to apply; whether to abbreviate the Statute-book or to leave it as it stood. But the reasons for adopting the principle of abbreviation were, first, that it had been already done on previous occasions, and we were only following the line in which the Council had advanced some distance; and, secondly, that the work of the revision of our Statute-book was committed to the Secretary in the Legislative Department, Mr. Stokes, who entertained a strong opinion on the subject, and who considered that, both as regards the bulk and the reading of the Statute-book, it would be in a much better shape if abbreviations were made, than if they were not made. These were the reasons for which MR. HOBHOUSE, for one, accepted the principle of abbreviation, as well as the other principle of eliding all those expressions which, by change of circumstances, had become unmeaning or misleading.

He would pass now to the second subject which he had mentioned, and he thought that, as regards the past, the Council were concerned to know that their business had not been conducted in a way to produce the disasters that had been supposed; and as regards the future, they were entitled to know that they were incurring no great risk by sending this Bill into Select Committee. It was true that in Bills like this, which were composed wholly of details and mostly of small details, it was the Select Committee who really framed the Bill. It would hardly be possible, and certainly was not usual, for the Council at large to exercise any particular control over what the Select Committee did. It was therefore an act of confidence in the Council to refer this Bill to a Select Committee, and it was proper for him to show that that confidence was not ill bestowed.

At our last meeting, the Lieutenant Governor, whom MR. HOBHOUSE was sorry not to see in his place that day, mentioned as a reason for distrusting a Bill of this kind, that there were two occasions on which it was found that the effect of an Obsolete Enactments Bill was to remove very important provisions from the Statute-book. He mentioned two laws which had been removed in that way. One of those was Regulation XXVII of 1793, and the other was the law by which Sessions Judges exercised their powers in Bengal. As to Regulation XXVII of 1793, His Honour said this:—

"Although, there was now a difference of opinion on the subject, that Regulation was repealed without deliberation. The objections of the Bengal Government were not taken into consideration. It was repealed as a mere Obsolete Enactments question at Simla, and no Member of the Council had an opportunity of considering the propriety of its repeal. It was repealed under the disguise of an obsolete Regulation; and several other Regulations also were repealed, by mere inadvertence, to the repeal of which the Bengal Government had a strong objection, but in regard to which it was not heard."

Now that statement had been made before, and it had been answered before, and MR. HOBHOUSE could not help thinking either that, in the hurry of business, the answer had not reached His Honour, or that speaking from memory he was deceived, as most of us were when speaking from memory, and that he remembered the statement of the Bengal Government and did not remember the answer made to it. MR. HOBHOUSE would mention both to the Council. In a letter written by the Bengal Government to the Government of India on the 13th December 1871 appeared the following statement. Speaking of Act XXIX of 1871, which was an Obsolete Enactments Act, the Bengal Government said:—

"The Draft Act first appeared in a very different form from that in which it is now passed, dealing with a far larger number of enactments. It then, in fact, was designed to expurgate

the whole Bengal Code of all provisions deemed to be no longer necessary. At that time, an official reference was made to the government of Sir William Grey. The subject was so large, and Mr. Cockerell so soon pressed for a reply, that it was not possible to give a detailed examination to it. The only officer who did examine it in detail gave a decided adverse opinion, and Sir W. Grey's reply amounted to a protest against passing any such Act in the Governor General's Council, deeming that it could best be dealt with in the Bengal Legislative Council. From that day to this no official communication whatever has been made to this Government. It has never been in any shape intimated that, notwithstanding Sir W. Grey's protest, the Government of India proposed to go on with the measure in an altered form. During the last cold season, when the Council was sitting in Calcutta, and when, if ever, it should naturally have been brought forward, it was never produced but quietly slept."

That letter was answered on the 24th January 1872, and it was answered thus:—

"In paragraph 2 you observe that the draft Act first appeared in a very different form from that in which it is now passed, dealing with a far larger number of enactments; that 'the subject was so large, and Mr. Cockerell so soon pressed for a reply, that it was not possible to give a detailed examination to it; that the only officer who did examine it in detail gave a decidedly adverse opinion, and Sir W. Grey's reply amounted to a protest against passing any such Act in the Governor General's Council, deeming that it could best be dealt with in the Bengal Legislative Council. From that day to this,' you add, 'no official communication has been made to this Government.'

"Upon this I am directed to observe that the Bill was forwarded to the Bengal Government for its opinion in August 1870, and that the opinion of that Government was forwarded to the Government of India in January 1871. The Government of India is of opinion that five months was quite sufficient time for the expression of opinion on the subject. To have given a longer period would have been to postpone the matter indefinitely.

"The Government of India in this Department is unable to accept the account given in your letter under notice of the reply of the Lieutenant-Governor of Bengal to its inquiries, or of the Bill itself as originally framed. The Bill originally consisted of two parts. It repealed altogether a large number of obsolete Regulations. It also repealed the obsolete parts of the remaining Regulations. What Sir W. Grey objected to was, not the repeal by the Government of India of the obsolete Regulations, but the partial repeal of the Regulations which were obsolete in part only. His words are—'The Lieutenant-Governor would have thought that the most convenient mode of proceeding might have been to stop short of the separate repeal of those portions selected for repeal,' *i. e.*, to confine the repeal to those Regulations which it was possible to repeal at once as a whole. The rest of his Secretary's letter points out that the re-enactment, in a more convenient shape, of the Regulations which it was proposed to repeal partially might be conveniently left to the Bengal Legislative Council, and that, accordingly, if the second schedule was still to be kept in the Bill, its operation should be confined to the North-Western Provinces. There is not a word in the letter to indicate that the Lieutenant Governor objected in any way to the repeal of the Regulations which it was proposed to repeal altogether. It would obviously have been a very inconvenient course to have them

repealed by two separate Acts,—one passed by the Governor General in Council for the North-Western Provinces, the other by the Bengal Legislative Council for the Lower Provinces.

"The Government of India accepted Sir W. Grey's views, omitted the schedule containing the partial repeals from the Bill, and confined its operation to the matter to which Sir W. Grey did not object. The Government of India in this Department is thus of opinion that so far from acting, 'notwithstanding Sir W. Grey's protest,' it adopted and carried out the very course which he suggested."

Then towards the end of the same letter, it was written :—

"In conclusion, I am to observe that Mr. C. D. Field, in his observations on the Bill which has now become Act XXIX of 1871, suggested that so much of Regulation XXVII of 1793 as declared the illegality of the collections, or showed the title of the former owners to compensation, or imposed a penalty for such collections, should be maintained, and that the Committee arrived at the conclusion embodied in the Bill for the reasons given above."

MR. HOBHOUSE thought the Council would see that it was a mistake and an error of memory now to say that the Bengal Government had strong objections to this repeal; that their objections were not taken into consideration; that no member of the Council had had an opportunity of considering the propriety of its repeal.

That brought him to the substance of the Regulation, whether it was obsolete or not. The Regulation was one relating to the collection of sayer duties. If the Council had followed him, they would see that Mr. Field proposed to retain parts of the Regulation, but that the Committee arrived at the conclusion that they ought to repeal the whole "for the reasons given above." Some parts proposed to be retained were those which declared the illegality of the collection of sayer duties by zamíndárs, and those which made compensation to them for the abolition of those duties. And the reason for not retaining these parts was that their repeal did not affect the principle of law which made the collection of sayer duties illegal, nor did it affect the right of any owner of these duties to receive compensation, especially as the time for claiming compensation had expired a great number of years before. The other part of the Regulation which it was proposed to retain was that part which imposed a penalty for the collection of sayer duties, but that penalty was imposed in a way which, owing to changes in procedure, was absolutely unworkable. It was to be imposed by means of a civil suit brought by somebody from whom the collection was illegally levied, in which suit he was first to recover damages from the person who levied the collection, and then the Judge was ordered to impose a fine according to the circumstances of the offender. That was obviously a mixing up of civil and criminal jurisdiction, which might have

been quite feasible in 1793, but which, owing to the complete severance of those jurisdictions in the machinery in existence in 1871, was impracticable. Therefore, it appeared on examining the Regulation that, whatever work it had to do, it had done. It declared the illegality of a number of collections which nevertheless had been levied, MR. HOBHOUSE believed, ever since the passing of the Regulation up to the present time; at all events, for the last thirty or forty years they had been collected in increasing quantities year by year, and they had been levied, not only by private zamíndárs, but by Government itself as proprietor of estates. As he had said on the last occasion, it was exactly one of those cases in which the world had outgrown the law. The facts had slipped away; and if you attempted to apply the Regulation to the existing state of facts, you would find that it would not help you out of difficulties, but rather get you into them. Therefore, it was thought better to repeal the Regulation *in toto*.

Now, looking back and trying to see what the repeal had effected, he could not find that it had effected any change in the law, except possibly—and he said only possibly—this; that, indirectly and in the process of a long time, some prescriptive rights might grow up which, if the Regulation was in the Statute-book, would not prevail. Whether that was a good thing or a bad thing might be disputed. But it was only in that possible, it was only in that indirect, it was only in that future, way that the repeal of the Regulation as obsolete could produce any effect. Obsolete it was, most clearly, as regards any direct, immediate, visible effect: it was only straining our vision into the future, that we could see, or might conjecture, that its repeal might possibly produce some effect.

Now he would pass on to the next question, which was that of the Sessions Judges. Upon that point, the Report of the Council's last Proceedings ran thus:—

> "His Honour the Lieutenant-Governor explained that there was one case in which there could be no doubt whatever that there had been an erroneous repeal. It was discovered that the consequence of one of these repealing enactments had been that, for a series of years, men had been hung throughout the country without any law whatever. Sessions Judges had been abolished by a repealing Act."

No doubt it was a very serious matter that a repealing Act should cause people to be hung without any law whatever. But that statement also had been made before, and had been answered, and he would again read to the Council what was said on the subject. In the same letter, that of the 13th

December 1871, from which he quoted previously, the Government of Bengal said this:

"The Lieutenant-Governor believes that most especial care is necessary in regard to the repealing of the old Regulations of that wonderful early Code, which is, in fact, the foundation of our whole system. He has already met with several instances in which great inconvenience is caused by inadvertent repeals, and a more marked instance could hardly be found than was exhibited in the necessity for passing the only other Act specially affecting Bengal, which was this season dealt with at Simla—the Sessions Judges Act already alluded to. That necessity was caused by a former repealing Act, by which the Sessions Judges were inadvertently repealed, and all capital and other sentences were rendered illegal for several years."

The Sessions Judges' Act was XIX of 1871; and the answer given to the letter was also in the previously quoted letter of the 24th January 1872. It was there stated that—

"The necessity for the Sessions Judges Act was caused, not by any inadvertency in any repealing Act, but by the loose and irregular manner in which the Regulations were drawn, and by the singular intricacy which was produced by the system which their authors adopted, of continually amending and modifying Regulations drawn at different times, and with a view to circumstances subsequently altered, instead of repealing the old enactments in a body and re-enacting them in a convenient and systematic shape. No more marked instance of this could be mentioned than the series of enactments which made 'all capital and other sentences illegal' for nearly forty years. The details will be found in the speeches made, when the Sessions Judges Act was passed, by Mr. Stephen and Mr. Cockerell. If the flaw in question had not been discovered in the course of the investigations required for the consolidation of the Regulations, it might have been suddenly brought to light by any person accused of crime, and might have caused the most serious failure of justice and public scandal. As to the other instances of inconvenience referred to, I am directed to say that none have come under the notice of the Government of India."

Now, the whole story of the change in the law and in the practice, by which it came about that Sessions Judges had not the power that they had assumed to exercise, was rather a complicated one. It would be all found very fully and clearly explained in Mr. Stephen's speech when he introduced the Sessions Judges' Act, on the 12th of May 1871, but, for the present purpose, MR. HOBHOUSE could explain it in a very few words to the Council. There were three enactments, Regulation I of 1829, Regulation VII of 1831, and Act VII of 1835. By the combined force of these enactments the Government of India and the Local Government between them, and by observing certain forms, might perhaps appoint Sessions Judges to administer criminal law distinct from the Commissioners of Divisions who represented the original Criminal Courts. He said "perhaps," because the enactments were so drawn that controversies might be raised on their legal effect. But in point of

fact the prescribed forms were never observed, or at all events had not been observed for a period of nearly forty years. The Supreme Government had not acted at all in the appointments, for which its intervention was necessary by law. The Local Governments had not followed the forms prescribed, but had assumed the power to appoint Sessions Judges of their own direct authority and to invest them with full criminal jurisdiction. The enactments therefore that he had mentioned were really inoperative and obsolete: when they were repealed they had not been used for years. There was not a single Judge in the whole country who derived title through them, or whom any body thought to derive title through them. They were therefore most properly struck out from the Statute-book as obsolete; and so little were they connected with the existing title of Sessions Judges, that no body had thought from that day to this (excepting the erroneous observation of the Government of Bengal) that the repeal made any difference. Indeed the flaw in the title of Sessions Judges was discovered in a totally different proceeding. It was on a comprehensive review of the Regulations being taken in the Legislative Department for the purpose of further consolidation, that this flaw was discovered. And then it was put right, not by any revival of the enactments, which were then completely off the Statute-book, and if put on again would be as useless as they were before, but by passing an entirely new law adapted to modern circumstances and calculated to give the powers required. Therefore, it would be found that this story about the Sessions Judges was a mistake; and he felt sure that if the Lieutenant-Governor was here, he would be glad to find that his memory had misled him, that there was not that carelessness which he supposed, and that there was not a tendency in these Acts to so much danger as he apprehended.

Mr. Hobhouse thought it right that the Council should know what he had stated; he had not spoken in a controversial spirit; because he quite agreed with the Lieutenant-Governor that the greatest caution should be exercised in removing from the Statute-book as dead matter that which might still be living matter.

In truth it was not easy to effect any very large and sweeping repeal without some danger of removing that which was not only alive but useful. That danger, however, was greater when we were passing an Act which professed to make a substantive alteration of the law, than when we were passing one which did not profess to make such alteration. In the former case we were enacting a new body of law, and were supposing that we covered all necessary ground. We then swept away all that we believed we had made unnecessary.

In that process there was considerable risk of leaving some of the necessary ground uncovered. And he might say frankly, not only that some disasters might occur, but that, having regard to our human fallibility, they must occasionally occur, in effecting these processes. But when we were passing an Obsolete Enactments Bill we were careful to see that the matter removed was really dead matter. We were not professing to substitute any thing for that which was to be removed; and what we had to ascertain was only that nobody having a knowledge of the subject considered that there was any use in any of the enactments proposed to be removed. On the whole, he thought the Council might fairly send this Bill into the hands of the Select Committee without any great anxiety that the law would be thrown into confusion. Errors there might be: he hoped they would be small ones. And he hoped that the Select Committee would err on the side of caution rather than on the side of incaution.

His Excellency THE PRESIDENT said that His Honour the Lieutenant-Governor was so constant and regular an attendant at the meetings of the Legislative Council, that he was sure his absence that day was only occasioned by the very onerous nature of the duties which were thrown upon him at this time to meet the wants of those parts of the province which were suffering from scarcity. As a considerable portion of the remarks of his hon'ble friend, Mr. Hobhouse, had been directed to some criticisms which the Lieutenant-Governor had made upon this Bill at a former meeting, HIS EXCELLENCY thought that the Lieutenant-Governor should have an opportunity of making any further remarks which he might wish to make upon the subject. That, he thought, could be well arranged if on this occasion we referred the Bill to a Select Committee with instructions to report in a month, and postponed the nomination of the members of the Committee to the next meeting.

The Motion was put and agreed to.

KULLU SUB-DIVISION (PANJÁB) BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to invest the Assistant Commissioner in charge of the Kullu Sub-division of the Kángra District with certain appellate powers. He said that the circumstances which made this Bill desirable were very simple. By Act IV of 1870, the Assistant Commissioner of the Kullu Sub-division of the Kángra District was invested with appellate powers in civil cases. That was different from the ordinary mode of procedure in the Panjáb. Under the Panjáb Courts' Act, appeals would be carried to the Deputy Commissioner of the Kángra District.

Act IV of 1870 was one of those measures which were passed to try an experiment, and see whether it worked conveniently or not, and it was passed for only a short term of years. It expired on the 13th April 1873, and since that time appeals had followed the ordinary course of procedure, as settled by the Panjáb Courts' Act. Now it was found that the practice under Act IV of 1870 was more convenient than the ordinary practice under the Panjáb Courts' Act, and the Judges of the Chief Court had proposed that the system established under Act IV of 1870 should be re-established. Kullu was a remote district; the cases which were tried there were very simple; and it was a hardship on the inhabitants to have to attend the Courts at the station of Kángra for the purpose of prosecuting appeals. These were the reasons which induced the Chief Court to propose this Bill. The Local Government approved of the measure. On those grounds MR. HOBHOUSE asked for leave to introduce the Bill.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 27th January 1874.

CALCUTTA;
The 13th January 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Office of Supt. Govt. Printing.—No. 2 2 1 D.—16-1-74—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 27th January 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. F. D. Inglis, C. S. I.
The Hon'ble Rajá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
The Hon'ble B. D. Colvin.

NEW MEMBER.

The Hon'ble MR. COLVIN took his seat as an Additional Member.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE moved that the following Members be appointed to the Select Committee on the Bill for the repeal of certain obsolete enactments:—

The Hon'ble Messrs. Inglis and Dalyell and the Mover.

He observed that the Lieutenant-Governor was not present, and it was doubtless owing to a great pressure of business that His Honour had not been able to attend this meeting. He had authorized MR. HOBHOUSE, in case he was not able to attend, to say that he did not desire to make any further observations so as to continue the controversy which arose on the occasion when leave was asked to introduce the Bill. The matter was indeed one of considerable complication as MR. HOBHOUSE was quite free to admit; and

His Honour did not consider it worth while to take up time with a subject which now related wholly to the past, and which was not of sufficient practical moment to justify further discussion.

The Motion was put and agreed to.

ACT X OF 1859, &c., EXPLANATORY BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to declare the true meaning of Acts X of 1859, XIV of 1863 and XXII of 1872.

BURMA FISHERIES BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to regulate Fisheries in British Burma. He thought that a very few observations would be sufficient to induce the Council to give leave to introduce this Bill. Fisheries of considerable extent and importance existed in British Burma. He found, on looking at the papers, that these fisheries brought in a revenue to Government of about six lákhs of rupees. There was no system of law for them to be found in any written document. A few rules were made in 1865 for the guidance of the local officers in dealing with these fisheries. These rules were, MR. HOBHOUSE believed, founded on the old customs of the country, and he had no doubt that they had a perfectly good legal foundation, and in some respects they worked well enough. But in other respects they were not quite sufficient, and as time went on, and the interests in these fisheries became larger and more complicated, it was found necessary to regulate the rights of parties; and therefore the Local Government had come up to ask that the matter be regulated by an Act of this Council. The nature of the proposed Bill he would explain on a future occasion. He thought the Council would be of opinion that the matter was of sufficient magnitude to be dealt with by law.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend Act XXIV of 1867 (the Administrator General's Act). He said that this Bill had been before the Council for a considerable time, but the last consideration of it by the Select Committee resulted in several small amendments being made. These were specified in the report as follows:—

"We have empowered the Government of India to authorize the Administrators General to deal with the effects of British subjects dying in allied Native States.

"We have enabled the Presidency High Courts to grant to the Administrators General letters limited to the purpose of dealing with the effects of military men in accordance with the Regimental Debts' Act. This will save time and expense.

"We have provided (clause 32) that, whenever the Administrator General carries over assets to separate accounts in his books, he shall notify the fact in the Gazette, and we have empowered him, with the consent of the Official Trustee, to appoint the latter functionary to be the trustee of such assets. We have also declared (clause 54) that the carrying of assets to separate accounts when so notified, and the transfer of assets to the Official Trustee, shall each be deemed a "distribution" for the purpose of entitling the Administrator General to draw the second moiety of his commission.

"We have struck out, as inconsistent with the rest of the section, the words in section 33 of the present Act (XXIV of 1868) providing that the plaintiff in a creditor's suit against the Administrator General shall not be entitled to enforce the decree.

"We have extended the Administrator General's power to grant certificates to cases when all or any of the assets are immoveable. As the law now stands, probate or letters of administration must be obtained in all such cases, however small the value of the property.

"We have empowered the Governor General in Council to decide questions as to the time at which any commission shall be deemed to have been payable, and declared that such decision shall be binding on every Administrator General and the estates held by him in his official capacity.

"We have (clause 64) specified the particulars of which the District Judge is to inform the Administrator General on the occasion of the death of a European in the District.

"We have saved the provisions of the Presidency Towns Police Acts as to petty estates which have been taken charge of by the Police.

"We have omitted as useless the section (64) of Act XXIV of 1868 providing for the appointment of a Deputy Administrator General for the North-Western Provinces, the Panjáb, &c".

The only point that it was necessary to mention was that inasmuch as the Act of 1867 had already been amended twice (by Act XIX of 1869 and Act V of 1870), the Select Committee thought it better to repeal the existing Acts, and re-enact them so as to have the law conveniently within the compass of a single enactment.

KULLU SUB-DIVISION (PANJÁB) APPELLATE POWERS BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to invest the Assistant Commissioner in charge of the Kullu Sub-Division of the Kángra District with certain appellate powers, and moved that it be referred to a Select Committee with instructions to report in a month. He had explained the object of the Bill when he got leave to introduce it. The Council would see that it was of the simplest possible description. It was intended merely to revive

an expired Act which conferred powers which were found by the Local Government to be beneficial.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in the *Gazette of India* and also in the *Panjáb Government Gazette* in English and in such other language as the Local Government might think fit.

The Motion was put and agreed to.

ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam. He said that the nature of the Bill was almost entirely formal. The authority by which the Chief Commissionership of Assam was erected was the executive power. But the same Statute that gave the Government of India power to effect this operation also said that no law or regulation prevailing in territories so dealt with should be repealed except by a law or regulation. It so happened that some of the authorities exercised by the Lieutenant-Governor and some of the authorities exercised by the Board of Revenue of Bengal were derived from laws or regulations, and therefore as regards those authorities, it would be necessary for the Council to pass a law in order to make the proposal complete of erecting a Chief Commissionership of Assam. For that formal purpose he desired to introduce a Bill.

With regard to the subsequent motions on the paper it had been thought desirable to pass this Bill *uno flatu*, because it was supposed that the arrangements were complete. He was informed that they were not complete, and he therefore wished to confine the motion this day to the first upon the paper, namely, to ask for leave to introduce a Bill.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to invest the Assistant Commissioner in charge of the Kullu Sub-division of the Kángra District with certain appellate powers—The Hon'ble Messrs. Inglis and Dalyell and the Mover.

The Council then adjourned to Tuesday, the 10th February 1874.

CALCUTTA,
The 27th January 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Office Supdt. Govt. Printing.—No. 292 L. D.—30-1-74.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 10th February 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

His Highness the Mahárájá of Vizianagram, K. C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble Rajá Ramánáth Tagore.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

The Hon'ble B. D. Colvin.

ACT X OF 1859, &c., EXPLANATORY BILL.

The Hon'ble MR. HOBHOUSE in moving that the Report of the Select Committee on the Bill to declare the true meaning of Acts X of 1859, XIV of 1863 and XXII of 1872, be taken into consideration, said:—"I fear that I shall have to make some lengthened observations on some of the points mentioned in the report, and I will, therefore, bespeak the patience of the Council at the outset. When leave was given to introduce this Bill, I dwelt in some detail on the natural history of Collectors, Deputy Collectors, Tahsíldárs, Settlement Officers with judicial powers, Settlement Officers without, and their genera, species, varieties and characteristics. In order to save repetition, I shall beg to refer occasionally to my former speech, and hope that the Council may recollect enough of it to follow me now.

"The first circumstance which I have to mention to the Council is, that since this Bill was introduced, there has been a great change in the law. When I introduced the Bill, the several enactments on which it operates were still in unimpaired force. But since that time His Excellency the Viceroy has seen fit to give assent to the Rent Bill for the North-Western Provinces, which repeals Act X of 1859, Act XIV of 1863 and Act XXII of 1872. Then, per-

haps, you will ask me 'where is the necessity for your Bill' ? I am sorry to say that the necessity for the Bill exists in undiminished force. So long as the Rent Acts were unrepealed, the Bill had two faces, like the God Janus, one looking forwards and one backwards. It has now only that one which looks backwards. But the Council will bear in mind that as regards all suits pending at the time of their repeal, the repealed Acts are still operative, and that the present measure was called for quite as much by the necessity of supporting what had been done as of providing for the future. It still remains the case that unless we interfere, the tempest of idle litigation, which I endeavoured to describe on a former occasion, will rage unchecked, and will cause great confusion. Doubtless, as a general rule, when a statute is repealed, for it the draftsman's occupation is gone. But it is not so here. We still have to protect the myriads of decisions which may be called in question, and the thousands which have actually been called in question; and we must bestow as much care as ever to make our work sound and capable of bearing any strain that may be laid on it.

"The alteration of the law is however one reason for a change, which doubtless the Council have observed, a change in the title of the Bill. Instead of calling it a Bill to declare the meaning of certain Acts, we have called it a Bill to quiet certain titles; and the new appellation represents more accurately its present scope and aspect.

"There is also another reason for the same change which I will explain. I mentioned previously that a number of appeals had been presented to District Judges for the purpose of quashing decisions of Deputy Collectors, on the ground that they had no authority. The High Court have acted with public spirit as becomes them, and have joined with the Local Government in endeavouring to stop the progress of such appeals. Still either from the speed with which the appeals have been heard, or from other causes, a number of appellate decisions have already been given. One case we happen to know in which a District Judge has overturned a number of Deputy Collectors' decisions on the ground that he was bound, after Pancham Singh's case, to hold that a public notification was necessary to confer powers on a Deputy Collector, and that one who had only received powers by means of a private letter from Government was not qualified. There may be many other similar cases, and in fact the Local Government believes them to be very numerous, though the impossibilty; of accurately ascertaining in reasonable time what has happened will be obvious to the Council. Now, our object is to do justice by stopping litigation. The hardship from which people are suffering is, that

the decrees given them by the officials sent by the Government to decide their disputes, have been pronounced to be nullities, and so have been take away from them. If each of these decrees has to be got back again by the institution of a fresh appeal in the High Court, it is a serious hardship on the rightful owner of it; and if that hardship is multiplied many times it becomes a serious public evil.

"For these reasons we have introduced into the preamble a recital to the following effect:—

"'And whereas it is believed that many decisions passed by officers engaged in making or revising settlements have, since the dates of the holdings aforesaid, been declared or treated by certain Appellate Courts as void for want of authority in such officers, and it is expedient that the parties concerned should not, by reason of such declaration or treatment, find it necessary or expedient to appeal from the decisions of such Courts';

and have followed it up by the enactment which is contained in the present section 8 of the Bill, providing that in such cases the original decrees shall be restored without appeal.

"The Council will bear in mind that we are not interfering with any decision made on the merits of the case. That would be a proceeding which a legislative body would be justified in taking only by the very rarest combination of circumstances; at all events it is one quite beyond the range of our contemplation. We are dealing solely with objections to the title to the Judge, and are saying nothing more than that the suitors shall find that he who appeared to them to be the Judge really was such. The effect will be (taking an enhancement suit by way of example) that a zamíndár who has obtained a decree from the Deputy Collector will be entitled to the rent decreed to him, without the necessity of appealing to the High Court, notwithstanding that a District Judge may in the meantime have declared the original decree invalid for want of authority in the original Judge. Such an operation as this seems to me most proper for a legislative body, one of whose chief concerns should be to see that the time, money and temper of the people are not expended in wrangling over formalities.

"I have not read to the Council the words of section 8, because one of the Judges of the High Court, Mr. Justice Turner, has done me the favour to write me a letter containing some useful suggestions about it, and I propose with the permission of His Excellency the President to move an amendment of the Bill on this point.

"I now pass to an important document with which our report is principally concerned, namely, a letter addressed to the Legislative Department by direction of the High Court of the North-Western Provinces, and embodying certain views and suggestions of that learned body. We are indeed very glad to learn the opinions of the Judges even in this shape and at this stage of the case, but I must say that if some of the opinions here expressed had come earlier and in a judicial instead of an extra-judicial character, they would have produced more desirable result in a way involving a less amount of labour and friction. The Government was exceedingly anxious to obtain a judicial review of the very brief and embarrassing judgment which I have read to the Council. They hoped that, whether the decision stood or fell—indeed whether the case was re-heard or not—the Court being made aware of the great difficulties attending their judgment, would take an opportunity of expounding its true meaning, and so removing all difficulties except such as were necessarily inherent in the convictions they ultimately held to. It was deemed both most respectful to the Court, and most advantageous to the public, to apply for a re-hearing of Pancham Singh's case. And if one may argue from what has been said off the Bench to what might have been said on it, this letter shows that our anticipations were not unreasonable. I collect for instance, though it is not stated in express terms, that the Courts are not disposed to abide by the judgment in Baladeva's case concerning the retrospective effect of a declaratory Act. They admit that a general power of referring suits to Deputy Collectors exists in Collectors by virtue of section 150 of Act X of 1859. They agree that it was never intended to deny that, under Act XXII of 1872, Deputy Collectors, whether invested with special powers or not, had a general jurisdiction over rent-suits. They agree that a public notification is not required by law for the exercise of powers under section 8 of Act XIV of 1863. And they throw overboard the conclusion that section 10 of Act XIV of 1863 compels the same officer to hear an enhancement suit from beginning to end; and with that conclusion, as appears to us, goes the whole argument founded on that section. Now, all these things, especially the first, are most important comments on the text of the two judgments we are dealing with. If delivered from the Bench, they would alter that text very substantially. The first one would enable us to put our Bill into the more simple and usual shape of a declaratory Act, the others would reduce to a small compass the points on which a declaration by the legislature is required. All these things might have been effectually said either upon the motion for re-hearing consistently with a refusal to re-hear, or upon a re-hearing consistently with a refusal to disturb the decision. Unfortunately for us, and as I think for the public, the

Division Court before whom this question came, not only thought themselves bound to refuse a re-hearing, but in refusing it confined themselves to the single remark that the application was out of the regular time, and that no sufficient reason was assigned for delay. The judgments therefore stand precisely as they were delivered.

"Now, as I have several times pointed out, our object was to quiet titles and to stop litigation. We knew that thousands of appeals were pending before District Judges. We knew that the District Judges must obey what they found laid down by the High Court. Our only guide to what the High Court had laid down was the text of the two judgments in question, and the Minute by Mr. Justice Turner which is referred to in our Report. From these we concluded that unless we extracted the rulings which we thought wrong, and said distinctly that they were contrary to Law, we should fail in our object of stopping litigation. Hence the necessity of detailing the points on which we wish the law to be clear; hence the necessity of framing our Bill, so as to make it a distinct reversal of the rulings; and, inasmuch as it would not become this Council to declare that people are wrong unless they think so, hence the necessity, which unhappily falls on my shoulders, of assigning reasons why such a declaration should be made.

"If I may here digress for a moment to speak of myself, I would say that I have not attempted to lay before the Council anything approaching to a full argument against the doctrines of the High Court, such as I should present to a Court of Appeal. I have only given such leading considerations as may be sufficient for the satisfaction of impartial minds who will give a little close attention to the subject. And though I am free individually to express my strong dissent from the conclusions of the High Court and from the methods which they have used in the construction of statutes, and though I should fail in my duty if I did not deal frankly with their arguments, I hope that I have not spoken, and shall not speak, with any personal disrespect of the members of that tribunal. The matter is one of grave public concern, and as such I must treat it. As between the infallibility of the High Court on the one hand, and Truth on the other, I must follow my old honest heathen teacher and say that both being dear to me, it is righteous to prefer the Truth.

"To return to the point. Have the difficulties which, as I have shown, were fastened on us when the re-hearing was refused, become in any degree relaxed by this letter of the High Court? I cannot think so. It must be remembered that this measure is primarily for the guidance of subordinate

Courts. Those Courts cannot properly look at extra-judicial utterances (even if they have the advantage of seeing them) to control judicial ones. If they did so, their labour and their bewilderment would be endless. To go no further than the present case, the Council will find among these papers two extra-judicial opinions; and on the most important point of all, those opinions are directly contradictory and destructive of one another. The subordinate Courts then must apply to the cases before them, the rulings of the High Court given in its judicial character and with all the sanctions which that character affords. They must do so according to the plain natural interpretation of the rulings themselves. If they did so in this case, the consequences would, in the opinion of the Select Committee, be most disastrous. We have had an illustration of this since the Bill was referred to us. One of the points which I mentioned as being probably and inferentially, though not in express words, decided by the judgment in Pancham Singh's case, is that a formal written order of the Local Government was necessary to invest Settlement Officers with the powers of Collectors. About the time that I was saying these words, the very point was being handled by a District Judge, and he decided that such an order was necessary, and that a letter written by the Local Government to a Deputy Collector was not sufficient for the purpose. This view alone invalidates a great number of decisions. We have had then to place ourselves in the position of a subordinate Court trying loyally to obey the decisions of its superior. As I have before observed, the judgment in Pancham Singh's case deals with a large and complicated subject in such very brief and general terms that conclusions are to be drawn from it which were not meant. This we cannot help, being left as we are without judicial explanation of its meaning. We have therefore followed the plain natural meaning which the judgment would convey to a man of common sense, and have dealt with it on that footing. I have said from the outset that this Bill is but a sorry substitute for a judicial exposition of the Law, and I think so still. But we have no other alternative that I can see; we have not time to ask for such an exposition in England, and we have asked for it but cannot get it in India; so we must do the best we can under the necessity which lies upon us.

"I will now call attention to one or two of the details with which the High Court's letter and our report are occupied. But I will only take the leading points, not the smaller ones, whether of agreement or disagreement. The High Court lay down the most excellent principle, that statements which are introduced into the preamble of Bills should be as far as possible accurate. They then proceed to illustrate the value of accuracy by referring to

something contained, not in the preamble of this Bill, but in my opening speech about it. They say—

"'The Local Government did not, as has been recently stated in Council, parcel out certain local areas and appoint Deputy Collectors to them for the purposes of the section relating to sub-divisions, but the Collector of the district was allowed to direct tahsíldári Deputy Collectors to receive plaints and try certain suits arising in their respective tahsíls, and again to direct Assistant Collectors with the powers of Deputy Collectors to receive plaints and try suits arising in a certain number of tahsíls, and, lastly, himself also to receive plaints and try suits arising within any portion of his district.'

"It has only an indirect bearing on this discussion, but I do so value accuracy, though I cannot always attain it, that I will, with the permission of the Council, say something upon the point.

"In the first place, the expressions I used would not be substantially inaccurate, even if the thing said by the High Court to have been done was all that was done. But the source from whence I drew my expressions was the orders of the Government. I need hardly say that I have made no original research and have no independent knowledge on this subject, but my friend Mr. Inglis had furnished me with the materials. It will be remembered that the question is whether the Government of the North-Western Provinces, not possessing ready-made Sub-divisions, deliberately and artificially created them for the purpose of putting officers in charge of them, and so getting judicial powers for those officers under the terms of Act X of 1859? I say aye, and the High Court says no. Now, I will beg the Council to attend to the following documents. The first is a letter from the Board of Revenue to the Local Government, dated 12th February 1862.

"'With reference to the orders of Government No. 20A (Revenue Department), dated 8th ultimo, appointing certain officers to be Deputy Collectors for the trial of suits under Act X of 1859, the Commissioner of Rohilcund has inquired whether these officers can only try cases especially made over to them by the Collectors or other officers in charge of sub-divisions of districts.

"'2. The Sadr Board of Revenue are of opinion that it might be advantageously left to the Collector to place the officers in question, for the purposes of the Act, 'in charge of a sub-division of his district' or not, according to his discretion. Under section 150, officers thus placed in charge could exercise their powers in all cases, without the cases being referred to him by the Collector.

"'3. I am directed to request that you will obtain His Honour the Lieutenant-Governor's orders on the subject, in view to the issue of a Circular Order.'

Then comes the answer of the Government, dated 28th February 1862:—

"'I have received and laid your letter No. 126, dated 12th instant, before the Lieutenant-Governor, who desires me to state, in reply, that he concurs with the Sadr Board of Revenue in thinking that, under section 150 of Act X of 1859, officers appointed Deputy Collectors for the trial of suits under that Act may advantageously be placed in charge of a sub-division of a district for the purposes of the Act, at the discretion of the Collector.

"'2. It was, indeed, contemplated by the Lieutenant-Governor, in appointing certain Tahsíldárs to be Deputy Collectors for the trial of suits under Act X of 1859, that they should exercise their functions each within his own tahsíl circle.'

"After that the Tahsíldárs and Deputy Collectors in question exercised judicial powers in rent-suits until the existence of Sub-divisions was denied in the Sub-division case. But if that is not a parcelling out of certain local areas and an appointment of Deputy Collectors to them for the purposes of the sections relating to Sub-divisions, the words must be used in a highly esoteric sense.

"The next matter is more important, because it forms part of the preamble to the Bill and leads up to one of the enactments in it. It relates indeed to the least sweeping, and therefore the least important, of the many objections taken to the title of the Revenue Judges; but it happens to be the most disputable, and therefore it is the most disputed. The simple question is whether the Local Government did or did not intend that when a man became a Deputy Collector employed in making or revising settlements, he should *ipso facto* become invested with jurisdiction over rent-suits? The Local Government say they did so intend. The High Court by their judgment denied it. We propose to affirm it by our Bill. The High Court say that such an affirmation would be inaccurate. That is the issue.

"The facts are as follows: Under the Act of 1863, the Local Government had power to confer jurisdiction over rent-suits on any officer employed in making or revising settlements. Out of such officers they might choose whom they pleased, and signify their choice in any mode they pleased. In the months of April and June 1863, they issued formal orders conferring the jurisdiction on all Deputy Collectors then employed in the requisite settlement work. Shortly afterwards, at least as early as the month of December 1863, it come to be thought that all Deputy Collectors becoming so employed also became invested with jurisdiction over rent-suits; and they all exercised that jurisdiction without doubt or dispute till the advent of Pancham Singh's case. A few of them were publicly notified as possessing jurisdiction, but the great bulk of them were not so notified. I can now give the Council, what I could not give before, the exact proportions as they have been furnished to

me after a careful enquiry by the Local Government. There have been ninety-eight of such officers, of whom nine have been specially notified, and eighty-nine not so. These are the facts. What conclusion then do the facts point to?

"The theory of the North-Western Provinces Government is very simple. They first state as a matter of fact within their own knowledge that they intended all the ninety-eight gentlemen in question to exercise jurisdiction over rent-suits. Then, they point to the phenomena as showing that they must have so intended, for it is impossible, say they, that an enormous mass of such business should be carried on for years all over the Province except with the knowledge and permission, and therefore according to the intention, of Government. As for their omission to notify eighty-nine officers, they say they were not bound to do it, and their omission does not invalidate the title of the officers; but that in point of fact they would have done it, if they had not been under the erroneous impression that it had already been done by General Order. And as for the actual notifications of nine, they cannot now trace the reasons, if indeed there were any reasons, for them, but say that they had a right to notify specially as well as not to notify specially, and the circumstance that a few were specially notified does not affect the question of their intention as to the others who were not specially notified.

"The theory of the High Court will be found stated in paragraph 22 of their letter:—

"'The only conclusion which is consistent with the facts is, that the Government intended on all occasions to invest officers with powers expressly, but that, by inadvertence, many officers exercised powers without having been so invested.'

"If I rightly understand it, for it may be read in more than one sense, it embodies two conclusions: first, that the direct evidence of the Local Government is to be passed over in silence: secondly, that the Government really intended to notify every officer before he could exercise jurisdiction over rent-suits, but that, by inadvertence, they omitted to do so in eighty-nine cases out of ninety-eight.

"Now I may observe first that this theory is an afterthought; for when Pancham Singh's case was decided, the Court did not think fit to call for evidence either direct or indirect of the intention of Government. In fact, as one of their subordinate Judges has decided, they considered that a formal written order was necessary in each case. This is one of the points in which, as I have mentioned, their letter reverses their judgment.

"Still an afterthought may be right, and if this is right our preamble is wrong and we cannot abide by it. Let us then see by what arguments the theory of the High Court is supported. First, they refer to the orders of April and June 1863. I think the learned Judges have construed those orders quite rightly, but they throw no light whatever on the intention of the Government subsequently to June 1863, and up to that date they show an intention to give powers to all Deputy Collectors employed in making or revising settlements. Secondly, referring to the practice, they say that in order to interpret a law practice must be uniform. But it so happens that in this part of the case nobody is relying on practice to interpret a law. Certain undisputed facts are relied on to establish another fact which is disputed. The question of intention or no intention is as simple a question of fact as any that can be submitted to a jury.

"Now, I will put a case to the Council. Suppose that my butler goes about Calcutta purchasing goods on my credit, that I pay the tradesmen when they send in their bills, and that this sort of thing goes on for ten years. Now, suppose that, at the end of the ten years, I turn round and tell the tradesmen that my butler has run away with the last batch of goods, and that I will not pay them, because I never gave him authority to pledge my credit. What would you think of such a defence? Would you not find a verdict against me, and think my defence a dishonest one into the bargain? Well, but suppose the tradesmen were ninety-eight in number, and it was shown that, with respect to nine, I had written directly to them, begging them to attend to my butler's orders. Would that make any difference with respect to the eighty-nine to whom I had not written? Would you not say at once that the claims of the eighty-nine must be judged of by my course of dealing with the eighty-nine, and that you did not care whether I had any reason, or no reason, or what was my reason, for behaving differently to the odd nine?

"If your answer would be such as I anticipate, then neither does the fact that the Government of the North-Western Provinces chose to gazette some officers invalidate the title of others whom they did not gazette. Indeed, so immaterial did this circumstance appear to me that, in opening the matter to the Council, I mentioned it as part of the *res gestæ* and then passed it by; and I should have been silent about it now, but for the singular amount of stress that has been laid upon it.

"I take it then that, in the case I have put, you would conclude, against my denial, that I had given my butler authority to pledge my credit. But even that does not represent the strength of the case in favour of those who

hold the decrees of the settlement officers. I must draw upon your imagination a little further. Suppose that it was not I, but a stranger, who denied the authority of my butler to pledge my credit; for instance, that I had become bankrupt and that my assignee was fighting the question with my creditors. And suppose that I appeared as a witness, and said that I had intended to give the disputed authority, would you then say that the facts showed that I intended to write to each tradesman before he was to give me credit, but that in most instances I forgot it? Would you not say at once that my evidence tallied exactly with the facts and must be true? Would you so much as turn round in the jury-box before giving your verdict?

"Now, then, you have the exact parallel to the case of the Local Government, the Revenue Judges and the suitors of their Courts. You have before you the evidence which the High Court did not call for. And if your view of it be such as I have ventured to anticipate, you will with perfect confidence say that credence is to be given to the statement of the Local Government, and that we are justified in embodying that statement in the preamble of our Bill.

"Really the only question is the unimportant one of date. As the intention of the Local Government is unwritten, an exact date cannot be assigned to it. But as the list of unnotified officers commences in December 1863, we are safe in concluding that the intention of the Local Government to confer the jurisdiction over rent-suits upon all Deputy Collectors employed in making or revising settlements must have been formed before that period. We have slightly altered this clause of the preamble so as not to affect a precision in date which we cannot attain, and so as to avoid the use of the word 'resolve,' which is sometimes used in a formal sense, and appears to have struck the learned Judges in that sense.

"The remaining points on which we find ourselves at variance with the learned Judges, relate principally to the question whether the doctrines we propose to negative have ever been affirmed.

"By far the most important of them forms the subject of the second section of the Bill and the 33rd paragraph of the letter. It relates to the general power of Collectors to refer suits to their Deputy Collectors. I have before explained fully the nature of the question and the reason why we were called on to decide it. The existence of this indispensable power was not in terms denied by the judgment in Pancham Singh's case, but there was a passage in the judgment which was not easily understood until the key was supplied by one of the learned Judges, who informed us that it rested on a tacit assumption

that the power of reference, exercised all over Bengal and the North-Western Provinces also ever since the passing of Act X of 1859, had no legal existence. I will read the passage from Mr. Justice Turner's Minute,—

"'Mr. Reid states he does 'not understand why the High Court have dragged section 162 (of the Rent Act) into the discussion.' The answer is very simple, because that section, and not as Mr. Reid erroneously states section 150, is the only section of either Act which gives the Collectors power to refer suits. The question at issue in regard to this portion of the case was simply whether or not the powers mentioned in section 8, Act XIV of 1863, included the powers given to Collectors by section 162 of the Rent Act.

"'So far as Mr. Reid's arguments then affect the question at issue, they would appear to amount to a mere *petitio principii*, and it seems that he misapprehended, not only the reference in the judgment to section 162, but the whole of the grounds on which this portion of the judgment proceeded.'

"Mr. Reid's *petitio principii* then was an assumption that section 150 did confer a general power of reference, and the whole ground of the misunderstood passage in the judgment was an assumption of the contrary. No doubt the High Court now tell us through their Registrar that Mr. Reid's assumption is right and that the contrary assumption is wrong. In that we concur, and if they had told us so from the Bench, it would be extremely important. But the passage in the judgment still remains, and is not explicable except on the theory supplied by Mr. Justice Turner. The High Court have not thought it right to correct or explain it by any judicial utterance, and the two extra-judicial utterances we have contradict one another. What, then, is a subordinate Judge to do under such circumstances if the legislature remains silent? I think the Council will be of opinion that we are bound to speak so as to make the matter clear.

"The next point relates to that part of the judgment which in apparent contravention of the Act of 1872 denies to Deputy Collectors any jurisdiction over rent-suits, unless they have been invested with powers under the Act of 1863. The learned Judges say in paragraph 26 of their letter, as Mr. Justice Turner said before, that this was not meant, and if this came from the Bench, it would relieve us from a difficulty. But nobody has attempted to show how the judgment can be construed so as to avoid the meaning. I explained the matter quite fully to the Council before. To my eyes and to those of my colleagues on the Select Committee there plainly stands the ruling we propose to negative. The learned Judges might have removed the whole difficulty when the motion for review was before them. Unluckily they have not done so, and it therefore remains for us to do.

"In the 28th and 29th paragraphs of their letters, the learned Judges also disavow a ruling imputed to them in the 11th paragraph of the preamble. This, again, is one of the points which it would have been most desirable to have had explained from the Bench, but which has not been so explained. I stated it fully before. The Council will remember that, in Pancham Singh's case, the judgment quotes the introductory words of a sentence, stops short there, and apparently deduces the conclusion that the introductory words were intended as a positive prohibition of the reference of enhancement suits. The statute, they say, has provided that, if a certain suit is brought before a certain officer, it *shall* (the word is emphasized in the judgment) be heard and determined by such officer. Not a word is said about his referee, therefore he cannot refer the suit. The extreme difficulties of this theory were not adverted to when it was promulgated. One however was pointed out, namely, that if the officer died or was removed pending the suit, all the proceedings would be useless. 'Oh but,' the learned Judges say, 'we did not mean to exclude his successor.' Very likely, but then the statute they quote says no more about a successor than it does about a referee. If one is to be excluded by its silence, why not the other? I say nothing here about the difficulty of saying who is the successor of such an officer in such a legal sense as will make him the very same officer according to the supposed exigency of the statute, for I dwelt on that topic before. The learned Judges have told us what was not meant, but they have not told us what was meant, nor how any argument is to be extracted from the statute in question, which shall be good to exclude a referee, and not good to exclude all the rest of the world. The plain fact is that a statute intended for one purpose has been applied to a totally different purpose, and, as invariably happens in such cases, a great difficulty has arisen. That difficulty must press on the subordinate Judges, unless we remove it as we propose to do.

"The only other point to which I think it necessary to call the special attention of the Council is the rules of evidence laid down by the ninth section of the Bill. The learned Judges say in paragraph 38 of their letter that they recognize these principles as substantive law. But they do not notice that one of them (that which related to presumptions), goes considerably beyond the Evidence Act, and therefore can hardly be said to be the general law of India, though it may be quite justifiable to lay it down in a very peculiar case like this, where we are so anxious to repress litigation, and to make every kind of presumption in favour of accomplished facts.

"The other direction, that regard should be had to the practice, is no doubt founded on a general principle. What we say is, that it shall be applied to

this subject. I think I am not wrong in saying that it has been wholly lost sight of; otherwise, we should at least find that it had been discussed, whether it had been applied or not. But the judgment is wholly silent about it. The case seems to me eminently fit for the application of this *principle*. The documents on which the Court decided, when not in favour of the practice, were at the worst ambiguous, and it is in the case of ambiguous documents that such a principle as this is useful. The usual rule has, indeed, been actually reversed in these cases. It would seem, not that every reasonable intendment has been made in favour of accomplished facts, but that every intendment has been made against them. The burden of proof has been shifted, and shifted on to the wrong shoulders. Speaking of the Deputy Collector, whose decision was under review, the learned Judges say 'nor is it *shown* that he has since been invested with special powers,' and so forth. 'Therefore,' they add, 'he had no jurisdiction.' They thought, therefore, that in the absence of evidence, it was to be assumed that a *de facto* Judge had no jurisdiction. If they had called for the evidence, they would have found, as I have abundantly shown, that the Deputy Collector in question had a perfectly good title. The issue was an issue of fact, apparently raised for the first time before the High Court, and I cannot find that evidence was ever properly taken upon it. Under those circumstances, the High Court assumed that the Deputy Collector had no title. That was reversing the order of things. If that process is correct, every respondent, who goes into a Court of appeal to maintain his decree, must make it a part of his case to prove the title of the original Judge. The principle we propose to enunciate is admitted to be right, and it seems to me that there is ample reason for applying it to this special subject.

"And this brings me, as the Council will probably be very glad to hear, to the last observation I have to make. The Council are aware that a Bill for the repeal of obsolete enactments is pending before us. Those Bills usually take long in settling, and if the present one lingers as usual, I may express a hope that the present measure, should you think fit to pass it, will figure in the schedule to that Bill. When all fear of appeal from the Deputy Collector's decision has been removed by time, the enactment which I am now presenting to you will have done its work, and our Secretary will subject it to amputation. It will pass away, and I hope that with it will pass away all memories of this controversy."

The Hon'ble MR. INGLIS wished to take this opportunity of explaining to the Council how it came to pass that the Government of the North-Western Provinces acted for nearly ten years on the understanding that officers employed in making or revising settlements of the land-revenue were invested by virtue

of their appointment to the Settlement Department with powers under section 8, Act XIV of 1863, and that, consequently, no separate order investing each officer by name with these powers was necessary. He also wished to notice briefly some passages in the letter from the learned Judges of the High Court at Allahabad, in which the action of the Local Government in the matter was commented on.

Shortly after Act XIV of 1863 was passed, the Government of the North-Western Provinces issued a notification investing all officers at present employed in making or revising settlements with the powers described in section 8, Act XIV of 1863.

On the 10th of May of the same year, the Board of Revenue, North-Western Provinces, with the sanction of the Local Government, issued a circular order to all Revenue Officers drawing their attention to the alterations made in Act X of 1859 by Act XIV of 1863, explaining some of its provisions, and laying down rules for the guidance both of officers employed in ordinary district work, and of officers attached to the Settlement Department in the performance of their duties under the Act. Paragraph 13 of this circular ran thus—

"The Government has invested all Collectors and their Assistants employed in making or revising Settlements with the powers described in sections 8 to 13; the heads of these officers have thus been considerably strengthened in determining the rent rates for the jamabundies; in cases of enhancement no notice under section 13 of Act X of 1859 will be necessary previous to the suit, and in these cases and those of abatement any number of ryots of the same mahal may be sued or sue."

On the 9th June 1863, the Board issued another circular order with the sanction of the Government to the following effect:—

"The Board of Revenue, North-Western Provinces, with the sanction of Government are pleased to intimate that Deputy Collectors under Regulation IX of 1833, employed in making or revising Settlements of the land-revenue in the Regulation Districts of these Provinces, are invested with the powers described in section 8, Act XIV of 1863, by the Government Notification No. 514 A, dated 21st April 1863."

It would be observed that these circulars so far as they related to the powers of Settlement Officers under section 8, Act XIV of 1863, were drawn in general terms. They stated broadly that all officers employed in settlement work were invested with these powers. The words "at present", which appeared in the Notification issued by the Government being omitted.

The Notification issued by the Government appeared once in the Gazette, and then dropped out of sight; the circulars issued by the Board on the contrary were published in the Gazette, were distributed, as was usually done, to all District and Settlement Officers, and were also bound up with a collection of circular orders issued for the guidance of all officers employed in the Revenue Department published under the authority and sanction of the Government. These circulars conveyed the rules and instructions laid down by the Board of Revenue with the sanction of Government on various matters connected with the revenue administration of the country. They were binding on all officers who might be at any time employed in the Revenue Department whether before or after their issue, and remained in force until cancelled or altered by a fresh circular; thus, the circulars issued relating to the powers of Settlement Officers under section 8, Act XIV of 1863, being drawn in general terms, were considered applicable to all officers employed in making and revising settlements either at the time they were published, or afterwards, and were held to convey the authority of the Government for the exercise of these powers by all officers engaged in this duty by virtue of their appointment to the Settlement Department, and that, consequently, no separate order conferring on each officer by name with these powers was required. Had it been considered necessary that this formality should be observed, there was no possible reason why it should have been omitted in the case of the comparatively small number of Settlement Officers invested with powers under section 8, Act XIV of 1863, while it had always been carefully observed in the case of the far larger number of officers invested with judicial powers under Act X of 1859 and Act XIV of 1863. For no officer, whether employed in district work, or in settlement work, had ever exercised judicial powers under these Acts without having been specially invested with powers by name by a notification in the Gazette. The only reason why this was not done in the case of Settlement Officers invested with powers under section 8, Act XIV of 1863, was that it was considered unnecessary. No doubt, some officers employed in making or revising settlements have been separately invested with these powers, but these cases were by no means so numerous as the learned Judges of the High Court at Allahabad appear to suppose from paragraph 21 of their letter. The list received from the Secretary to the Government of the North-Western Provinces, to which the Hon'ble Mr. Hobhouse referred just now, showed that ninety-eight officers have been posted to the Settlement Department since the issue of the circulars of 1863, and that only nine of these officers have been invested with powers under section 8, Act XIV of 1863, by a separate order, though these powers have been exercised by all. Why these nine officers were treated differently from the eighty-nine others also

employed in making or revising settlements it was impossible to discover now. Every one of these ninety-eight officers, whether acting under the authority of special orders, as nine of them did, or under the general orders issued in 1863, as eighty-nine of them have done, have all of them been employed on exactly the same work, and have exercised exactly the same powers. That they exercised these powers in accordance with the intention of Government and with the full knowledge of the Government was proved by the orders that have at various times been issued for their guidance, by their having been required to submit statements showing how the cases tried by them under the powers conferred on them by section 8, Act XIV of 1863, were disposed of; and also by many officers having been transferred to the Settlement Department and posted to districts under settlement for the express purpose of deciding suits relating to enhancement and abatement of rent under the simpler procedure allowed by Act XIV of 1863 at such times; and by other officers having been retained in the Settlement Department after the assessment of the district in which they were employed had been completed, in order that they might dispose of arrears of this kind of suits: it might, he thought, have been held that these orders constituted a sufficient investiture under the Act, considering that section 8 merely provided that the Government might invest any officer employed in making or revising settlements with certain powers, but said nothing as to the mode in which these powers were to be conferred; but however this might be the fact that all the Settlement Officers in the North-Western Provinces exercised these powers under the general authority supposed to have been conveyed by the circular orders of 1863, with the full knowledge of Government and in accordance with the intention of Government, could not be disputed.

He had now to explain to the Council why, this being the case, the Government thought it advisable in 1872 to issue the letters of investiture referred to by the learned Judges in paragraphs 21 and 32 of their letter. This was done in consequence of its having accidentally come to the knowledge of the Local Government, when the Bill which afterwards became Act XXII of 1872 was under discussion, that the High Court considered that a separate order investing each Settlement Officer with these powers should in all cases be issued. The Local Government being desirous in this matter, as in all others connected with the judicial administration of the country, to meet the wishes of the learned Judges of the High Court, determined to do what it was now understood they considered necessary, but there was this difficulty in doing it: it was apprehended that if a notification had appeared in the Gazette invest-

ing by name some fifty or sixty officers employed in settlement work with powers under section 8, Act XIV of 1863, that attention would be at once drawn to the fact that they had exercised these powers for many years past without any order of the kind; and that the difficulties, the Government wished to avoid, might be created. Accordingly, as Act XIV of 1863 said nothing as to the mode in which these powers were to be conferred, it was determined that a separate letter, signed by the Secretary to the Government, should be addressed to every officer employed in making or revising settlements. This was done, and a letter was sent then, or immediately afterwards, to every officer so employed, no exception was made. Every officer engaged in settlement work having exercised these powers in accordance with the intention of Government, ever since Act XIV of 1863 was passed, letters were addressed to all, the letters being intended not to bestow powers on those officers which they had not previously exercised, but as a precautionary measure to confirm and ratify what had been done in the past; and this brought him to paragraph 12 of Mr. Spankie's letter. The learned Judges had said :—

"The Court has always regarded the authority conferred on the Local Government by section 8, Act XIV of 1863, as an authority which involved the duty of selecting, out of the officers appointed to the Settlement Department, such as might be competent for the exercise of judicial powers, and therefore as not authorizing the Government to pass a resolution which would apply to officers thereafter to be appointed."

MR. INGLIS thought he should be able to satisfy the Council that although the Government decided that all officers employed in making or revising settlements, should be invested with power under section 8, Act XIV of 1863, yet that the duties of selection had not deen neglected, and that these powers have not been conferred indiscriminately on officers not qualified to exercise them. The officers employed in the Settlement Department in the North-Western Provinces were all chosen from the best Revenue Officers in the Province. They were every one of them selected from among those officers of the Revenue Department who had previously been invested with full judicial powers under Act X of 1859 and Act XIV of 1863, after having passed a strict examination in the Revenue and Rent Laws. Thus, the Settlement Officers were all selected men who, previous to their appointment to the Settlement Department, had been invested with full judicial powers under the Rent Acts, so that the effect in their case of an order investing them with powers under section 8, Act XIV of 1863, would not be to confer on them any judicial powers they did not previously exercise, but merely to enable them, in a particular class of cases, under Act X of 1859, namely, cases relating to enhancement of rent, to dispense with the notice required by section 13 of that Act;

and in cases relating to enhancement or abatement of rent to allow tenants of the same village to sue or be sued in the same petition of plaint; alterations in procedure made solely for the convenience of the people, to enable them to get their disputes relating to rent decided by the Settlement Officers while in camp in the cold weather, and on the spot, which could not be done were the procedure laid down in Act X of 1859, for the guidance of the ordinary District Courts, strictly followed.

In the first part of Mr. Spankie's letter some remarks were made by the learned Judges on the practice which had prevailed in the North-Western Provinces ever since Act X of 1859 was introduced, of restricting Tahsíldárs, when first invested with the powers of Deputy Collectors under the Act, to the trial of the easier and less important classes of cases, the more important and difficult ones being reserved for trial by officers of greater experience; and also on the Resolution issued by the Government in September 1872 after Act XXII of 1872 was passed, directing that this practice should be continued, and that among others, cases relating to enhancement of rent should be reserved for trial by officers of experience. These remarks had no bearing on the Bill now before the Council, and MR. INGLIS would not have considered it necessary to call attention to them were it not that in paragraph 32 of Mr. Spankie's letter the learned Judges said that the first section of the Bill which was based on the statement made by the Local Government that all Deputy Collectors employed in making or revising settlements had for the last ten years exercised these powers, was incorrect, inasmuch as by this Resolution of September 1872, some Deputy Collectors were prohibited from trying enhancement suits, and that this prohibition was extended to certain other Deputy Collectors employed on settlement work, by their being omitted from the number of Deputy Collectors, to whom letters of investiture were at the same time sent. The passage in Mr. Spankie's letter to which he referred, was as follows:—

"Again, this section declares that *all* Deputy Collectors have been and are, and are intended to be, invested with powers, &c. The Court doubts whether the Local Government would be prepared to accept so general a declaration. It will be seen by referring to the Resolution of the Local Government passed after the enactment of Act XXII of 1872, that the Local Government does not consider all Deputy Collectors competent to try enhancement cases, and it is noteworthy that, when, in September 1872, the Local Government, with the view, as it would seem, of curing the defect which had been brought to its notice, invested with powers under section 8, Act XIV of 1863, upwards of fifty officers permanently appointed to settlement work, it did not invest several officers who were officiating as Deputy Collectors in that Department. It is, therefore, suggested that the declaration should be restricted to officers who have actually exercised powers."

The mistake which the learned Judges made in saying that the first section of the Bill declared that all Deputy Collectors had been, and were intended to be, invested with powers under section 8, Act XIV of 1863, had been pointed out and corrected by the Select Committee in their report. He should therefore confine his remarks to the Resolution and letters issued by Government in September 1872, in order to show to the Council that though the Resolution of September 1872 and the letters of investiture were issued about the same time and were in part applicable to Deputy Collectors, yet that they had no connection whatever with each other, and that the omission to send letters to certain Tahsíldárs employed on settlement work was purely accidental, and not intended to have the effect the learned Judges attribute to it.

The Resolution of Government issued in September 1872 was addressed solely to officers employed on district work who had been invested with judicial powers under Act X of 1859 and Act XIV of 1863, and contained instructions for their guidance. It was rendered necessary by the wide terms in which Act XXII of 1872 was purposely drawn. This Act was passed to remedy the state of things which had been brought about by the decision of the High Court passed early that year, in which it was ruled that a tahsíl was not a sub-division of a district in the North-Western Provinces. This decision had affected, it was estimated, over 600,000 decisions of the Subordinate Courts. The relations between landlord and tenant throughout the North-Western Provinces had been thrown into utter confusion by it, while appeals were being presented in hundreds by persons against whom decrees had been passed, simply on the ground of want of authority in the Court which had passed the decree, it was obviously necessary that this state of things should be remedied as quickly as possible. The Council therefore determined, as the Hon'ble Mr. Hobhouse stated when he introduced the Bill, "to describe the practice in general terms of wide extent without attempting to go into minute, and also in wide terms, to render legal those acts which had been done, or should be done, in accordance with the practice," leaving it to the Local Government to regulate the practice as before. Accordingly, the Government immediately after the passing of the Act issued this Resolution of September 1872 by which Collectors of Districts were directed to exercise the powers which they had previously exercised, and which they undoubtedly possessed under Act X of 1859; and to withdraw from Tahsíldárs when first invested with powers the trial of cases relating to enhancement of rent. This order was confined to the officers employed on district work.

The letters of September 1872 on the contrary were addressed solely to Settlement Officers; they were, as he had already explained, merely letters of in-

vestiture containing no rules or instructions whatever. It was intended that one should be sent to every officer employed in making or revising settlements, but when the first list was made out, the names of a few Tahsíldárs employed on this duty were incidentally omitted. As soon as the omission was discovered, it was rectified, and letters were sent to these officers as had been done to the others; no officers actually engaged in making or revising settlements were omitted, indeed it was these officers, who of all others, were best qualified to dispose of suits relating to enhancement or abatement of rent, as the special knowledge required by them of the qualities of the soil, and of the prevailing rates of rent, in the district in which they were employed, gave them peculiar advantages in deciding disputes of this nature not possessed by the ordinary district Courts.

MR. INGLIS thought it necessary to give this explanation to the Council of the reasons which led the Local Government to dispense for nearly ten years with the issue of a formal order investing each officer employed in settlement work with powers under section 8, Act XIV of 1863, and why, this being the case, letters of investiture were addressed to every one of these officers in 1872, and also to show to the Council that though it has always been the practice for all these officers to exercise these powers *exofficio*, yet that the Government in determining that this should be the practice, had not conferred these powers indiscriminately on officers not fully qualified to exercise them, but has performed its duty of selection when these officers were posted to the Settlement Department.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the following clauses be substituted for clause 8:—

"Every decree or order of an Appellate Court made on or after the first day of January 1871, which has declared or treated any judicial order or proceeding of an officer employed in making or revising a settlement to be void for want of authority in such officer, is hereby declared to be itself void, and all such orders and proceedings of such officers shall be deemed to be as valid as if no such decree or order declaring them to be void for want of authority had been passed in appeal:

"Provided that whenever the merits of the case constituted any portion of the grounds of appeal, and the appellant, who has succeeded on the ground of want of authority in the Court of first instance, desires to prosecute his appeal on the merits, and applies to the Appellate Court for that purpose within ninety days after the passing of this Act, the Appellate Court shall resume the hearing of the appeal and proceed to determine it on the merits:

"Provided also that the provisions of this section shall not apply to any case in which the holder of a decree treated as invalid for want of authority as aforesaid has, before the passing of this Act, obtained a decree in a competent Court in another suit upon the same cause of action."

He said that the amendment was suggested by the letter from Mr. Justice Turner. He could not give the Council the assurance that it was exactly and in every particular what had been suggested, but it was in the spirit of and mainly in accordance with the suggestion.

The second paragraph was introduced in order to make it abundantly clear that in case of an appeal on the merits we did not wish to interfere, but dealt only with those cases in which the decrees were upset solely for want of authority in the Judge, not on the merits. There were cases, the learned Judge had pointed out, in which, since the quashing of the original decree, the decree-holder had brought a new suit and had pushed his suit to a successful termination. In that case, he might have two decrees in his hands if the provisions of this section applied to him. So we thought it better to leave the first decree to its fate, and let him enforce his second one. Our object being to stop litigation, we need not interfere where it had come to an end of itself. The first part of the new clause was section 8 of the Bill, with this slight alteration that we put in a date beyond which the section should not go back. That was a date recommended by his hon'ble friend, Mr. Inglis, as being a perfectly safe date to fix. We did not want to have people raking up old suits, in case there should possibly be any of a date prior to January 1871.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said: "Before the Council passes this Bill I wish to say that it has not, in my opinion, occupied unduly our time. The Bill is intended to prevent an enormous amount of litigation in certain suits relating to land in the North-Western Provinces, not on their merits or from any doubts as to the substantial qualification of the officers who originally decided them, but in consequence of a judgment of the High Court of the North-Western Provinces, which affected the validity of the appointments of some of those officers. The point, as the Council are aware, was one of considerable difficulty. The Government of India were exceedingly anxious that legislation should, if possible, be avoided, and we hoped that, in some manner, the case might have been re-heard by the High Court of the North-

Western Provinces, and the question more fully and completely considered. Unfortunately, this course did not appear to be practicable. We have, however, received on the part of the High Court a letter which is now before the Council, and with which my hon'ble friend, Mr. Hobhouse, has dealt to-day. We have also received a Minute by Mr. Justice Turner, to which Mr. Hobhouse has referred.

"I think that Members of Council must be satisfied, from the manner in which Mr. Hobhouse has explained the views entertained by the Select Committee on this Bill, that the most careful attention has been paid to the remarks which have been made on the part of the High Court with respect to the Bill; and the Council are, I am sure, much indebted to the High Court for the careful suggestions which we have received from them. I entirely agree with Mr. Hobhouse that this letter contains only an extra-judicial opinion, and that however important and valuable the arguments on the several points may be, they cannot be looked upon by those who have to administer the law, as possessing legal authority. I therefore concur with the conclusions come to by the Committee, and the reasons which Mr. Hobhouse has advanced for those conclusions.

"The Council will observe that the Committee have adopted the suggestions made by the High Court with regard to many of the points raised in the letter, and also that we have just amended one of the clauses of the Bill in consequence of the suggestions of Mr. Justice Turner.

"I am sure that the Council will feel that, although such legislation as this is much to be deprecated as a general rule, we should not have properly performed our duty if we had allowed unnecessary and expensive litigation to prevail throughout the North-Western Provinces, and had shrunk from introducing the explanatory provisions which are contained in this Bill, and which we hope will prevent that unnecessary litigation.

"I am sure also that in this matter, which has been one of some delicacy and considerable difficulty, we are much indebted to the ability and discretion with which Mr. Hobhouse has brought the subject before the Council and has dealt with it, from the time when it first came under our consideration."

The Motion was put and agreed to.

MARRIED WOMEN'S PROPERTY BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to explain and amend the law relating to certain Married Women, and for other purposes.

FOREIGN ENLISTMENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to prohibit recruiting in British India for the service of Foreign States.

ADMINISTRATOR GENERAL'S ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved that the Final Report of the Select Committee on the Bill to amend Act XXIV of 1867 (the Administrator General's Act), be taken into consideration. He said that the Bill had been before the Council for a long time. It was introduced in February 1872, and the first report of the Select Committee was presented in April of the same year. Shortly after that, questions arose connected with the Administrator General's office which required consideration in the executive departments, and some correspondence ensued. So that it was not until quite lately that we resumed the consideration of the Bill. It had been re-committed, and this report was the result. There were only two important amendments. The first extended the provisions of the Administrator General's Act to the effects of British subjects dying in Native States in India. That was one of the objects with which the Bill was introduced; in fact it was originally the only object of its introduction. The other point was that a question had arisen as to the time when the commission of the Administrator General was due. Now, the object of paying this officer, or any officer, on the principle of commission or percentage on assets realized and administered, was to stimulate the exertion of the officer. We might take the more simple mode of paying by salary, or a more simple mode of paying by commission, namely, by paying the whole on the realization of assets, and, indeed, it had been proposed by a high legal authority that the whole of the commission should be paid on receipt of the assets. Such an arrangement would apply a stimulus to get in the assets, but it would not apply a stimulus on the officer to distribute the assets. In the Act of 1867, the arrangement adopted was that which appeared in section 54 of the present Bill. The Administrator General of Bengal was paid three per cent. on the assets of an estate, which payment was intended to cover, not merely the expense and the trouble of collecting the assets, but also the trouble and responsibility of distributing them in due course of administration. Therefore, it was provided that one portion should be paid on the collection of the assets and the other half should be paid to the Administrator General on the distribution of the assets in due course of administration. Then the question arose as to what was a distribution of assets in due course of administration.

A question occurred of this kind; the assets were got in, all the creditors paid, and the estate cleared of all claims in due course of administration. But

when the Administrator General came to pay out the clear balance to the parties entitled, he found that they were in such a position that they could not receive payment. The person who might be solely entitled to payment might be a child, or it might be found that the residue of an estate was settled on a man for life with remainder to his children. In this case the money could not be paid.

The course which had been followed in such cases was to carry the balance to the private account of the parties interested. MR. HOBHOUSE believed that till now the Administrators General in all the Presidencies had followed the same course of practice in treating that as distribution in due course of administration, and had then paid themselves the remaining one and a half per cent. Mr. Hogg, the predecessor of Mr. Broughton the present Administrator General, brought the question before the auditors, and they decided that he was in such a case entitled to take the commission. When the present Administrator General succeeded him, he felt doubtful upon the point, and he did not feel himself at liberty to take the commission for himself, and he had partly upon his own account and partly on account of the estates of which he was trustee, raised a question as against the estate of Mr. Hogg. It became necessary to decide that question, and it was very plain to any body who had had anything to do with administration, that similar questions might arise from time to time. In the great majority of cases it would be perfectly plain when the assets of an estate were distributed and when they were not. But there would be cases which were doubtful. In respect to the present point, it was proposed to put in a clause making it clear that the course pursued by the late Administrator General was the right course. In MR. HOBHOUSE'S opinion it was the right course as the law stood. But it was proposed to make it plain by an explanation added to section 54 in these words:—

"The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section."

The words "notified as hereinbefore provided" referred to another provision introduced in the Bill by the Select Committee. It had been the practice not to give any public notification, nor necessarily any private notification to the parties when the assets were carried to a separate account. But it was very important to distinguish between that which was administration proper, during which the assets were kept in bulk and were free to answer all claims of outsiders, and that which was trusteeship when the property was recognized as belonging to particular individuals. Therefore, it was provided

that, whenever the funds were carried over to a separate account, notice should be given, and from that moment the Administrator General would become a Trustee. In order that he might rid himself of that trust, he might transfer the fund to the Official Trustee with the consent of that officer. The trusteeship began on the distribution of the assets when the trouble and responsibility of administration would be over, and the Administrator General would be entitled to his commission.

Another proposal before the Committee was that the Administrator General should be entitled to his commission at the time of payment. But it was more desirable to provide that the commission should be paid at the time when the administration was ended and the funds carried over to a separate account. Anybody who had had much experience in administration knew that the main trouble was over when the Administrator had cleared the estate of all outstanding claims. It was extremely desirable that that should be done at as early a period as possible. But if we postponed the right to commission until the time of payment, then we gave no motive to complete the administration, whenever the Administrator General found that the parties were under such disabilities as he had mentioned or any disability which would necessitate a postponement of actual payment. On that ground the Committee had adhered to the existing plan, and had made it clear that the commission should be paid when the assets were carried to a separate account.

As to the other questions which might arise, what we proposed was that the Executive Government should have the power to decide them as they arose. The matter was one in regard to which the public had no interest excepting that the best rule should prevail. They wanted that rule which would make the officer work best. It made no difference as between one and another Administrator General; to them it was just as broad as it was long. It made no difference to the estates if you took the whole mass of them. As regards any particular estate, it might make a difference, because if the assets were of fluctuating nature, the taking of commission ten years earlier or later might have different results. But that was a matter of chance which could not be foreseen as to any particular estate, and if you looked at the aggregate of the estates, of course the gains would exactly balance the losses. The subject therefore was one which it was quite convenient for the executive to settle either by laying down a general rule, or deciding a particular case, so as to bind the Administrator General and the estates which he represented.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE had a few remarks to make with regard to section 36 of the Bill. That section provided that any person

not being a Hindú or a Muhammadan or a Buddhist should not have the privilege of getting a certificate from the Administrator General. The estate for which letters of administration might be required might be a very small one, and for a Hindú or a Muhammadan or a Buddhist to be obliged to apply to the High Court and go through a troublesome and expensive procedure in order to get out letters of administration, would be a very great hardship; because, for instance, if the estate consisted only of a Government Promissory Note of Rs. 500, or if it was composed of a small house of the value of Rs. 1000, the person applying for letters of administration might have to expend about Rs. 250 or Rs. 300 to obtain them, and in that case the estate would be almost completely exhausted. Besides, RÁJÁ RAMÁNÁTH TAGORE considered the principle of that section as something very invidious. Why should a Hindú or a Muhammadan not get the same privilege as a Christian, or a person of any other pursuasion? Even a Sonthal might get a certificate from the Administrator General without any expense. Under these circumstances, he suggested that the words "not being a Hindú, Muhammadan or Buddhist," which were inserted in the section to which he referred, should, if the Council were of the same opinion, be expunged.

Then there was another clause at the end of the same section to which he objected; that was to say, under a certificate from the Administrator General, a person could take out all the money belonging to an estate except that which was in a Government Savings Bank. He did not understand the reason of not allowing a person to draw out money, however small, from a Savings Bank. A Savings Bank was the same as the Bank of Bengal or any other Bank; and if an executor was allowed to draw money from the Bank of Bengal, why should he not be allowed to draw it from a Savings Bank? He was aware that these clauses did not contain any thing new. He believed the same provision was contained in the existing law, but that appeared to him to be no reason why it should be continued in this new and amending Act. What was wrong was wrong whether it was in a new or in an old Act.

The Hon'ble MR. HOBHOUSE said that if he rightly understood the observations of his hon'ble friend, he gathered that he wished to omit from section 36 the words "not being a Hindú, Muhammadan or Buddhist." That section was part of the present law, and we had not considered any alteration of it; and if any alteration was to be considered, it would be more convenient that we should consider it in Select Committee. But MR. HOBHOUSE did not think there was any necessity for amending the section, because the provisions of Act XXVII of 1860 applied to the case of persons who were not included

in the Administrator General's Act. Under Act XXVII of 1860, the District Judge was the officer to whom such persons should apply for a certificate. As the matter had come upon MR. HOBHOUSE by surprise, he could not explain all the details of that Act. All that he could at present say was that the law had provided for both cases, and that the matter would require careful consideration before the amendment proposed could be acceded to.

His Excellency THE PRESIDENT suggested that the consideration of the Bill might be postponed.

The Hon'ble MR. HOBHOUSE observed that in several cases the question about commission was pending, and that it was very inconvenient to have it unsettled.

The Bill had been hanging on for some time, and he thought it would be better to pass it without further delay. Besides, before very long, it would be necessary to consider the whole question of the position of the Administrators General and the Official Trustees. His hon'ble friend, Mr. Colvin, mentioned to him some matters on which he desired alteration, and on MR. HOBHOUSE's mentioning that he was of opinion that the consideration of those questions should be postponed until the consideration of a more comprehensive measure, his hon'ble friend had agreed to that view. There was an objection to making alterations in the arrangements during an incumbency, but some alterations might usefully be made when the officials were changed.

His Excellency THE PRESIDENT said that it had been explained the reason why this clause did not include persons who were Hindús, Muhammadans or Buddhists was, that the same provision was to be found in Act XXVII of 1860 which did not extend to European British subjects, and therefore the advantage which by Act XXVII of 1860 already existed as regards Hindús, Muhammadans and Buddhists was simply by the Administrator General's Act given to persons other than Hindús, Muhammadans or Buddhists. Therefore, there was no real difference in the law as applied to either class of Her Majesty's subjects. The Hon'ble Member would therefore perhaps not press the amendment.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE consented to withdraw the amendment.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as finally amended be passed.

The Motion was put and agreed to.

BURMA FISHERIES BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to regulate Fisheries in British Burma, and moved that it be referred to a Select Committee with instructions to report in two months. He said that this Bill started with the recital that the exclusive right of fisheries in British Burma belonged by the custom of the country to the Government. That was the foundation of the Bill. In a matter such as that we had to depend on information given by the Local Government who had been making enquiry on the subject; and before asking the Council to refer the Bill to a Select Committee, he would read some passages from a letter received from the Local Government. The Commissioner of Rangoon made enquiries on the subject from a number of persons, and recorded the statements of three old men. One of these men said—

"The Dalla fisheries were at one time some Amwaytsa* and some Ayadaw. The 'Amwaytsa fisheries were those which had remained in one family, and had been worked successively by the members of that family. All the different fisheries had a fixed price on them, and in the case of the Amwaytsa fisheries, any one wishing to work them had to pay the owner the price of the fishery and a certain fee to Government, whilst the owner paid a commission to Government on the price, generally 20 per cent. In the time of the Kôn-boung Meng, an order was issued that all fisheries were to be Ayadaw, and then whoever worked the fishery paid to Government the price of the fishery and the tax,—this was the custom when the English took the country."

* *Amway*, any thing obtained by succession or inheritance.
Tsa, the person who (eats) enjoys this privilege.
Amwaytsa, a holder by descent or inheritance.

There was a good deal of negative evidence on the point, and Mr. Eden, the Chief Commissioner, summed up the matter thus—

"The question is, it appears to Mr. Eden, a very simple one. Is Government justified in claiming the fisheries as State property, and raising a revenue by them? No one has ever, as far as Mr. Eden knows, questioned the right of Government; a large revenue has long been raised from this resource, and in 1872-73 the revenue amounted to no less than rupees 5,85,000."

This Bill would now be published, and we should see if anybody concerned would dispute the assertion made on the part of the Government. Every claim was most likely to challenge objection, when definitely put forward in a legal document. If there was any evidence against the views of the Government upon this point, he hoped the publication of the Bill would produce it all.

The rest of the Bill was mere matter of regulation. Section 3 said, according to the preamble, that no right to fish in any fishery should be deemed

to have been acquired by the public or by any person, excepting in the modes prescribed in the Act, but that nothing was to be taken to deprive the public of the right of angling with a rod and line only, provided that the exercise of such right might in certain cases be suspended by proclamation.

There were other provisions by which the Deputy Commissioner might either declare a fishery open to the public or to any class of persons, or he might lease the exclusive right of fishing to any person, or he might grant licenses to any number of persons to exercise the right of fishing. Then came clauses preventive of the erection of weirs,—a precaution included in all Bills of this kind; and then a clause which imposed penalties. There were also clauses providing for the making of subsidiary rules. The Bill itself was a very simple one, depending on the recital itself that the exclusive right of fishing belonged to Government.

The Hon'ble MR. SUTHERLAND asked permission to say that he was glad that the hon'ble Member in charge of the Bill had given two months for the submission of the Report of the Select Committee. This would give ample time for the consideration of the sections introduced in the Bill. He would say, with reference to what had fallen from his hon'ble friend in regard to the preamble, that the statement with which it started was not borne out by gentlemen here who were interested in the Province, and who had had an opportunity of seeing this Bill; and MR. SUTHERLAND thought that on that account it was quite desirable that an opportunity should be given to merchants and other non-official persons to submit their opinions. He had been struck with a sentence which was in the Statement of Objects and Reasons accompanying the Bill, to the effect that fisheries in British Burma supplied one of the chief articles of food of the great mass of the population. And he ventured to think that on that ground alone the Council should be most careful and cautious in adopting the stringent provisions embodied in the Bill, as he was sure it was not the wish of the Government nor of this Council, that any hardship should be entailed on the people of Burma. He would venture to say, both with regard to this measure and to the other measure in connection with British Burma before the Council, that they were not calculated to foster and advance the interests of a young Province, he thought that Burma had a great future before it, and it would therefore be a matter of regret if legislation now were of a repressive and discouraging nature, rather than what the Province was entitled to, namely, legislation that would forward and advance its resources.

The Hon'ble MR. DALYELL desired to express his general concurrence in his hon'ble friend Mr. Sutherland's remarks. This Bill appeared to him

to be one which required the most careful and deliberate consideration of the Council. It seemed to inaugurate a new era in the general taxation of the Empire; for, although in some parts of the country fisheries were in some measure under control of the Government, there was no statute so far as he was aware which brought them under regular taxation. Whether, on general principles, such an enactment was desirable or expedient was a very grave question, and the question was one which would to some extent be answered by the course taken by the Council in reference to this Bill. As far as he was informed at present, it seemed any thing but desirable to bring under taxation any article which entered so largely into the food-supply of the poorer classes of the people, as his hon'ble friend had just said. Then we knew, from the replies to the queries asked by the Government of India with regard to the pressure of the general taxation of the Empire some eighteen months ago, that it was not the weight of the taxation which was objected to so much as the variety and constant changes in our fiscal measures. It was not the rate of a particular tax to which the people were accustomed which pressed upon them, but the feeling that at any moment some new tax might be imposed with the machinery and incidence of which they were unacquainted. It was true his hon'ble friend, Mr. Hobhouse, had said that the right of fishing in Burma vested in the State, but another hon'ble member, Mr. Sutherland, had stated that in some quarters that statement was contested. But in any case it was well known that in many other parts of India, fisheries vested, originally at any rate, in the ancient Hindú village communities. MR. DALYELL thought, perhaps, it would be desirable that the Select Committee should be asked so far to alter the character of the Bill as to make it rather a measure of conservation, in which form it would be a desirable and suitable enactment in many parts of the Empire, instead of allowing it to remain in its present form, a measure of taxation.

The Hon'ble MR. BAYLEY said he wished to say one word with reference to what had fallen from his hon'ble friend, Mr. Dalyell. The question before the Council was merely, as stated by his hon'ble friend, Mr. Sutherland, whether fisheries in Burma were the property of the State. It was not a question of taxation. Whoever might be the proprietor had the same rights as in regard to any other property and would doubtless exercise them. And therefore the public would be precisely in the same position as they were now; the Bill would in no way affect the price of food to be consumed. Whoever owned the property would take the profits from it. The question was in whom the right of property vested. As a matter of fact, it was asserted by the Chief Commissioner that, in the large majority of cases, fisheries in British Burma had been considered by the Government from time immemorial to be their

property and treated as such. What he asked was expressly to legalize the actual practice. Whether it was right or not was a question of broad policy to be considered. That was the only point at issue. It was not a question of taxation but of property.

As regards the other question, what actually was the state of the law in other parts of India, that seemed to MR. BAYLEY a matter wholly apart from the Council. The whole state of society in all parts of Burma differed most widely from the state of society in other parts of British India, not less probably than that which finds society in England. There was, for example, no such thing as a village community in Burma or any other sort of community unless it was a community of monks. We found that rights in all immoveable property, even land throughout the province of Burma, were in an uncertain and fluctuating condition, and it was the object of the Government to give those rights consistency. But there was nothing in the condition of those rights as to which any useful analogy could be drawn from the law prevailing on the Continent of India from which to draw any analogy, much more any question as to the right in fisheries. The whole question of the rights in moveable property was totally different in Burma from what it was in other places, and must be determined on distinct evidence and to a great extent on local considerations.

The Hon'ble MR. HOBHOUSE said that he should be exceedingly anxious that everybody who was in a position to adduce any evidence on the subject should have an opportunity of doing so. He hoped his hon'ble friends, Mr. Dalyell and Mr. Sutherland, would consent to serve on the Committee. As far as his own mind went, it was unprejudiced in the matter, neither for nor against the recital; and that was because he had not yet sufficiently studied the matter to have a clear opinion.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in English and Burmese in the *British Burma Gazette*.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to regulate Fisheries in British Burma,—The Hon'ble Messrs. Ellis, Bayley, Dalyell and Sutherland and the Mover.

The Council then adjourned to Tuesday, the 24th February 1874.

CALCUTTA;
The 10th February 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt Govt. Printing.—No. 326 L. D.—16-2-74.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 24th February 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

His Highness the Maháráját of Vizianagram, K. C. S. I.

The Hon'ble Rájá Ramánáth Tagore.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

The Hon'ble B. D. Colvin.

MARRIED WOMEN'S PROPERTY BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to explain and amend the law relating to certain Married Women, and for other purposes, be taken into consideration. He said that the Council would observe by the Report that there was very little alteration in the Bill as it now stood from what it was when it was first introduced. He had, therefore, little to explain to the Council. He had shown on a previous occasion that the Bill did not introduce any new principle. The broad principle of the separation of interests as between husband and wife was affirmed by the Indian Succession Act, and the object of this Bill was only to extend that principle to certain details, and to make it apply in one particular class of transactions, namely, policies of insurance, to persons who were married before the Indian Succession Act came into force.

There were only three alterations of any importance introduced by the Select Committee in the Bill. The first was in section 5, where the power of the wife to effect policies of insurance had been made indefinite and not confined to her own life or the life of her husband—it might be on that of a parent, a sister, or any one else. There was no reason why the power should not be extended.

By section 7, married women who were sued would be subject to such suits, processes and orders in respect of their property as they would be liable to if they were unmarried. It gave them, with the power, the responsibility of having separate property. Whether that would have been the law without this enactment, he could not say. His impression was that it would. We had an intimation of judicial opinion in that direction. He had said that the matter would be taken into consideration by the Select Committee. They did consider it, and proposed to declare the law as it stood in the Bill.

The only other alteration was that section 9 had been made to extend to persons who were married before the 1st January 1866 when they had separate property. It could not possibly matter when the separate property was acquired: whether the property was acquired by special contract before the 1st January 1866, or by the general provisions of the law subsequent to that date, did not signify at all with respect to the liabilities of the wife under that enactment.

Those were all the points he had to mention.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed. In doing so he might state that, as far as suggestions had come in, there had been a remarkable unanimity expressed that the Bill was a useful one, and there was every reason to believe that, though its operation would not be extensive, it would operate well.

The Motion was put and agreed to.

FOREIGN ENLISTMENT BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to prohibit recruiting in British India for the service of Foreign States, be taken into consideration. He said that the only point which he thought it at all necessary to observe upon was as to the form of the Bill, by which we did not positively prohibit in the Act itself the recruiting which it was desired to control, but only gave to the Government a power of interfering whenever they thought it necessary. That point he had mentioned before, and His Honour the Lieutenant-Governor of Bengal then expressed some doubt which was the better principle to go upon, and MR. HOBHOUSE then stated that the Select Committee would take the matter into consideration. The question had been discussed, and it seemed to them that it might be inconvenient to have a positive law which might prevent a

perfectly innocent operation. On the other hand, they believed that a proceeding of this sort could not go on to any injurious extent or for any length of time without the Government becoming aware of it, and the moment that was so they could move in the matter. It was therefore thought the Bill, as it at present stood, was calculated to preserve to the Government all the necessary powers.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

KULLU SUB-DIVISION (PANJÁB) APPELLATE POWERS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to invest the Assistant Commissioner in charge of the Kullu Sub-division of the Kángra District with certain appellate powers.

ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that the Council would observe that the Bill was exactly what he had said it would be. It was merely a formal transfer of the powers vested by Statute in the Lieutenant-Governor and the Board of Revenue of Bengal, for the purpose of their being exercised under the direction of the Governor General in Council by the new Chief Commissioner of Assam. MR. HOBHOUSE thought a fortnight would be found quite sufficient time for the Select Committee to make their report.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOBHOUSE moved that, in the room of the Hon'ble Mr. Inglis, the Hon'ble Mr. Dalyell be appointed a Member of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam——The Hon'ble Messrs. Bayley, Dalyell and the Mover.

The Council then adjourned to Tuesday, the 10th March 1874.

CALCUTTA;
The 24th February 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt. Govt. Printing,—No 353, L D.—27-2-74.—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 10th March 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I.,

The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble B. D. Colvin.

KULLU SUB-DIVISION (PANJÁB) APPELLATE POWERS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to invest the Assistant Commissioner in charge of the Kullu Sub-division of the Kángra District with certain appellate powers, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

PRIVY COUNCIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented the final Report of the Select Committee on the Bill to consolidate and amend the law relating to the admission of appeals to Her Majesty in Council from judgments and orders of the Civil Courts. He said this was a matter which had been once or twice before the Council, both in the time of his predecessor and in his own time. The Bill was now put into a shape which was acceptable to the Judicial Committee of the Privy Council. The Secretary of State had been in correspondence with the Judicial Committee at our desire, and they had approved of the Bill as it

stood, except that the Committee had since made one or two small alterations in matters on which the Judicial Committee would not think it necessary to form any opinion.

The small alterations since made were these. We had provided that the appealable value of the suit must be rupees 10,000, both as tested by the matter in dispute in the appeal and as tested by the matter in dispute in the original suit. As the law stood, it was doubtful whether a person having an appealable claim for less than rupees 10,000 might add the costs of suit so as to bring it within the amount, and so get the appeal as of right. We thought it better that there should not be that element of uncertainty in the appealable value.

Another alteration which had been since made was for the purpose of giving further freedom to the High Courts in moulding the proceedings upon appeal. The Bill contained some rules of practice which had been laid down for the Non-Regulation Provinces. They were, in fact, very much the same as those which prevailed in the High Courts. There were however various small matters, such as the preparation of the copy of the record, which might be usefully moulded from time to time by each High Court for itself according as convenience dictated. We had, therefore, thought it better to give the High Courts some discretion in the framing of this copy and in other such matters.

The only other alteration made was a verbal alteration which MR. HOBHOUSE need not mention to the Council.

BURMA MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to provide for the appointment of Municipal Committees in Towns in British Burma, and for other purposes. He would call attention to the principal additions made by the Select Committee. The Bill, when before the Council on the last occasion, provided that the Act might be extended to any town, the population of which exceeded five thousand. It was thought better not to have a hard and fast line of that sort, but to leave it to the discretion of the Local Government. The Local Government contended that it was wise to give such a discretion, and after discussion the Committee came to that opinion, and the Bill was framed as it now stood. The principal alteration made by the Committee regarded the maximum of taxation fixed by section 12 of the Bill. We found that the maximum rates proposed by the Bill were fifty per cent higher than the rates which now prevailed, and besides the maximum provided by clause 12, the Bill provided for some additional taxation on certain events. For instance, if the Committee desired to light the town, they might charge lands and buildings a two per cent. rate: if they decided

to carry water to the town, they might charge a rate to the extent of two per cent. more. That was four per cent. for light and water. The prevailing maximum was five per cent., and therefore where rates for light and water were added, it might nearly double the taxation. Then there was a general clause at the end providing that a higher rate of taxation might be imposed with the consent of the Governor General in Council. That was a clause similar to those put in other Municipal Acts, for the reason that it was impossible to say what was the best mode of imposing taxation in every place, and that it was desirable to have an elastic provision which might be adjusted from time to time according to the wants of the people. Considering also that the invariable tendency of a maximum was to become the minimum, the Committee thought it more appropriate to fix the maximum of ordinary taxation at the rate which a Municipal Committee could impose at the present ruling maximum, instead of making it fifty per cent. higher than the present rate. Our attention was called by a petition from Maulmain (and one or two official gentlemen expressed the same opinion) to the fact that there would be danger of over-taxation if we put the rate as it stood before. We therefore thought it better to proceed as we had done.

We were also pressed by the Local Government to insert a clause in the Bill, giving the Municipality greater control over private markets. In looking into the reasons assigned for that proposal, we found that the principal reasons resolved themselves into this, that the vendors at some markets exposed for sale food which was not fit for human consumption. We thought that the Penal Code provided sufficiently for offences of that kind, and that it was not desirable to put into the hands of Municipal Committees any further and arbitrary powers of control which might have the effect of altogether superseding private markets.

Another matter which we were asked to introduce in the Bill, was to impose liabilities on the shipping for the purpose of making them properly contribute to the support of their seamen taken into the hospitals of the town, a difficulty having been felt in adjusting charges incurred on account of the treatment and support of sick seamen. We thought it better not to put such a provision into a Municipal Bill, but rather to introduce a Bill for the amendment of the Port-dues Act, which would be the subject of a subsequent motion. Those were the principal points upon which the Bill had been altered.

ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam.

INDIAN LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE, in moving for leave to introduce a Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority, said:—

"The quantity of new law which I have to propose to the Council is exceedingly small: so small that I expect to be laughed at when the magnitude of the proposal is compared with that of the subject we have to deal with. Yet it is a necessary part of a plan for dealing with a subject of much importance and difficulty. And in order to give the Council a clear understanding of the subject they are asked to handle, I must say something about Law Reports in general and Indian Law Reports in particular.

"As to the nature of a Law Report, everybody knows thus much: that it is an account of a decision by a judicial tribunal; but I suppose that, beyond those who are professionally concerned in the matter, very few have set themselves to know accurately what is the office of such a Report, or how it should be constructed.

"Now, a Law Report may be looked on in two wholly different aspects, according to the object at which it aims. You may have a matter of public interest, such for instance as the Tichborne case, where people like to know what is going on. There are a great many cases which the readers of newspapers like to see reported in greater or less detail. Or, for the purpose of ulterior proceedings, the parties interested may wish to have a full account of what has taken place in Court. There is no case which may not properly be the subject of such Reports as these; and all that is required of them is that they shall be accurate enough for their purpose. But with reports for these purposes we have at present nothing whatever to do.

"We are concerned only with the other aspect of Law Reports, that is to say, so far as their object is to show how the decision bears upon the general body of law. This is what I may call the legislative aspect of the case. Every judicial decision is an authoritative declaration of the legal result of the facts before the Court. If the facts are such as to call for some new application of principle, if former applications of principle are disturbed by the decision, or if having been seriously questioned they are re-affirmed, in such cases some addition has been made to the body of the law, which may be of little or may be of great importance. Little or great, all Courts subordinate to that which uttered the judgment are bound to follow it in similar cases.

"I will give an instance which will be familiar to a large number of Indian officials. The well-known Act X of 1859 provided that occupancy-rights

should not be acquired if there was a written contract containing an express stipulation contrary thereto. The question then arose whether a lease for a definite term of years was such a contract. One High Court said yes; another said no. During this conflict each had added a gloss to the text of the statute, which materially affected its operation, and which all their subordinate Courts were bound to obey. After some discussion the two Courts came into agreement, and so the law was settled one way.

"It will be seen then that the law is in a continual state of growth and flux by the accretion of judicial decisions. Such a decision may affect one way or another a great number of the transactions of mankind. And so far as this effect of a decision goes, the Judge does something more than settle the dispute between the parties; he lays down law for the whole country and decides in anticipation cases for other and future litigants.

"Now for the settlement of the particular dispute there is no need of a report; the Judge's opinion is equally conclusive whether it is reported well or ill, or not at all. But as regards its effect on the law, everything depends on the report. If not reported at all the decision is usually forgotten. Unreported decisions are like the heroes who lived before Agamemnon, of whom we are told that they lived indeed, but are unwept, unknown, sunk in eternal darkness, for lack of a sacred bard. If a decision is reported, and reported badly, it may hold out false lights for many years, and so cause mischief to innocent wayfarers. In short, the Judge in his capacity of lawgiver speaks to the world through his Reporter, and he affects the law nearly in proportion as his cases are well or ill selected for report, and as the reports of them are well or ill executed.

"To illustrate the power which has fallen into the hands of Reporters, I will refer to a statement made by the late Lord Campbell. At one time of his life he was a Law Reporter, and he then kept a separate drawer labelled 'Bad Law,' into which he put the decisions he disapproved. So that we have as the outcome of Lord Ellenborough's decisions, not what he decided, but what his Reporter selected. If in one case he laid down a broad principle, and in the next case qualified it, his Reporter may have thought the qualification wrong, and have given to the world the principle as stamped with Lord Ellenborough's authority, but without the qualification which the same authority would have added.

"In Lord Campbell's hands both Lord Ellenborough and the public have probably fared well enough. In other cases, results have not been so happy; for example, the decisions of one of the greatest of Equity Judges, Lord Eldon, have lost much of their value from the slovenly mode in which his principal Reporter did his work.

"It has been alleged of the Reporter Vernon, that he had a spite against a Chancellor whose decisions he reported, and so adjusted his reports as to exhibit the judgments in a bad light. I remember on one occasion a case being cited from Vernon's reports, when Lord Justice Turner, admitting that it had been received as law for a century and a half, thought it so wrong that there must be some mistake. He stopped the argument, sent for the record, and found that the facts were misreported and the case was not any authority for the proposition indicated by the Reporter. So people found that, instead of a true divinity, they had been worshipping a stock or a stone, and that, under the guise of a divine afflatus from the oracle, they had only been listening to the uninspired utterance of its priest.

"Now if all these things are borne in mind; the power of the Reporter; the binding authority of the reported decision over subordinate Courts; its influence with co-ordinate Courts; if also we remember that a very large portion of the law of the country will be found not in written statutes, but in judicial decisions, we shall feel the great importance of having our reporting done well. And the Council will probably agree with the spokesman of the Council of the Bengal Law Reports, Mr. Pitt Kennedy, when he says that 'it is hardly a less important part of the duty of Government to publish that part of the law which is enunciated by its tribunals than to promulgate its legislation,' and with my predecessor, Mr. Stephen, when he says that reporting should be regarded as a branch of legislation.

"Such being the importance of the work, how has it been performed?

"In this country, indeed, the Government did, previously to the establishment of High Courts, publish and distribute reports of the decisions of the Sadr Díwání Adálat; and many of those reports are exceedingly well done. In England the matter has gone very much at haphazard. In earlier times no reports could be published, except such as were approved by the Judges. Afterwards it got to be considered that there was some magic in reports published by a Barrister, and the principle was accepted, indeed is said to have been openly enunciated by a Judge of great eminence, that 'every gentleman at the Bar is entitled to report a case, and to have it cited as authority as reported by him.' At the same time, it has been considered that the excellence of reports may be subjected to a commercial test, like that of wine or piece goods, and that those which sell best are best. In India the Government has interfered to the extent of subsidizing certain reports, but has not, at least of late years, assumed any responsibility for them. We have slid into the loose English practice, and have allowed reports published by anybody and in any way to be scattered broadcast about the country, each just as authentic as another, and all alike claiming the implicit obedience of the subordinate Courts.

"Now the consequences of the principles I have mentioned are obvious enough, and we have reaped a full harvest of them both in England and in India. If all reports are to carry authority with them, reporting may be made a very easy business, and a lucrative one as well. A volume may be published, half full of rubbish, half full of inaccuracies, yet the profession must buy it, because it can be cited as binding authority, and no one in ignorance of its contents can be sure that he is advising his client rightly, or arguing his case efficiently, or, if he is a Judge, deciding the case before him soundly. So it becomes an object with a Reporter to publish a great quantity of cases; if he gets some which his rivals have not got, then his volume has more law in it than theirs, and so it must be bought. That is called free-trade. It has been forgotten that in this matter free-trade could not possibly supply what was wanted; for, in the first place, the very foundation of free-trade is wanting, the freedom of the purchaser to take or to refuse the wares offered to him; and, in the second place, the vendor is under the strongest temptation to select the cases which give him the least trouble, and which fill up the greatest space.

"I will now show by other evidence than my own how this system, if system it can be called, has operated on the quantity and quality of our Indian Reports. I quote from Mr. Stephen's elaborate Minute on the Administration of Justice, and the Council will easily pardon me if I read at some length what is there stated in a more forcible and interesting way than is attainable by me. Mr. Stephen has just mentioned the proceedings of the four High Courts and the Chief Court of the Panjáb. He then speaks thus—

"'The decisions thus continually pronounced by five independent Courts are carefully collected and re-published in the form of reports. These reports are of very different degrees of merit: some are very good, others very bad indeed, consisting merely of reprints of the written judgments of the Judges, with no statement of the facts of the case, or of the arguments of the advocates. These reports, however, are now increasing in number so rapidly that a complete set of them at the present moment would consist of upwards of 60 thick volumes, which are growing at the rate of four volumes a year at least.

"'No one who is acquainted with the course which has been run by English law under the English system of reporting, will be surprised by the course which the matter has taken, and is taking, in India. Law books on the regular English pattern are numerous. Such a law book is usually a mere repertory of cases tacked on to some Act or set of Acts, and as incapable of being read or remembered as a dictionary or any other book of reference. Such books, in fact, are mere indices, and, in my opinion, do more to prevent people from gaining rational or general notions of the law than all other causes put together. For instance, a Magistrate wishes to acquaint himself with the Code of Civil Procedure. The Act is a long one, containing 388 sections; but, by carefully reading it through, a good general knowledge of the whole system may be obtained. The published editions, however, are not intended to give any sort of general notion of the subject, still less are they meant to state the principles on which the

Code is founded, or to point out the objects which it is intended to effect. Their one purpose is to serve as arsenals of precedents by which the parties to a suit may attack each other and embarrass the Judge, and that purpose they effectually carry out. Mr. Wilkinson's edition of Mr. Broughton's edition of the Code of Civil Procedure and of the Acts which amend it, quotes about 2,500 cases on that subject alone. The Indian Digest published last year, and containing notes of the cases decided by the four High Courts down to the time of its publication, is asserted by its editors to be a summary of 37 volumes of reports of cases decided in eight or nine years. It contains 808 large octavo pages printed in small type and in double columns. The mere names of the cases fill 90 such pages. There are about 100 cases in each page, so that at least 9,000 cases would appear to have been decided upon various matters in the course of the eight or nine years over which the work extends. It may, indeed, be said, speaking roughly, that the additions which the Courts make annually to the law are about four volumes containing about 1,000 decisions. I do not know what a complete set of cases on Indian Law would cost, but I am informed that it would cost about Rs. 250 a year to keep it up.

"'This can hardly be regarded as otherwise than a most mischievous state of things, and one which ought not to be permitted to continue. I believe that most of the Judges of the High Courts share in this opinion. Some of the most distinguished of them have expressed themselves to me most strongly as to the mischief which is done by the enormous multiplication of reports, the indiscriminating manner in which they are accepted as of authority co-ordinate with that of Acts of the legislature, and the very poor quality of many of the reports. They have told me in particular that the effect of this state of things upon the Native bar is peculiarly bad. The Native pleaders and vakíls are said to have plenty of quickness and excellent memories, but to be wanting in power and grasp of understanding. On persons of this temper a vast mass of precedents is apt to produce a most injurious effect. It diverts their minds from the object of obtaining any real comprehensive knowledge of law to that of amassing a number of isolated unconnected rulings with which they can pelt their antagonists.'

"He then distinguishes between cases which are worth reporting and those which are not, and continues—

"'If reporting is taken up as a mere private commercial speculation, every case is worth reporting because there is no case which may not, under some circumstances or other, be used as a precedent useful to some one or other in some argument or other. The Reporter's object, if the reports are allowed to be a mere private commercial enterprise, is to sell his reports; and, on the one hand, he naturally wishes to make them as complete as possible, in order that others which are more complete may not supersede or compete with them; whilst, on the other hand, as the purchaser is practically obliged to buy the reports for fear his knowledge should fall behindhand, it is the obvious interest of the Reporter to bring out as much matter as he can.

"'A vast number of these reports are of such a nature that their publication is in the highest degree mischievous, as tending to overload the law with needless precedents, and so to confuse and hamper the whole administration of justice. In many cases no really new point of law is decided, but merely a question of fact between two or more parties. In other instances, points of law are decided or remarked upon incidentally and hastily, and in such a manner as not to express the careful and deliberate opinions of the Court. Thus, the High Court of Calcutta is divided into division Courts of two Judges each. All their judgments are

published just as they are delivered (generally without any proper statement of facts to render them intelligible). Without any disrespect to the Court, it is surely clear that to convert every judgment so delivered into a binding precedent, that is to say, into a law, is to attach to them a degree of importance which they are very far from deserving.

"'In other cases the point decided is so minute, so peculiar, or so much dependent upon the particular facts of the case, that it is not worth recording.

"'In almost every case the length of the report is out of all proportion to its importance. To print everything at full length, and to leave the reader to pick out what he wants, is always the easiest of all ways of reporting a case, is the most profitable to the publisher, and the most expensive to the public.

"'Reports published as a private speculation must appear at stated intervals, and the customer is apt to think that, if he has not good measure, he is defrauded. A really careful report ought to mention no one fact that is not essential to the full understanding of the judgment, and to omit no one fact that is essential to it.

"'If this rule were carefully observed, I believe that all reports might be reduced to a small fraction of their present bulk.

"'There are numerous cases, too, which, however important and however well-decided they may be, ought not to form precedents. Cases on the construction of written documents should never be reported unless they decide some broad principle. Can there be a less satisfactory argument than this? A and B must be held to have meant so and so by such an agreement, because C and D were held to have meant something like it by a somewhat similar agreement. In nearly every instance such cases should be decided on their individual merits.'

"Now that is a forcible picture of the state of things which results from holding at the same time that Law Reports are fit subjects for commercial speculation and are also to be treated as binding authorities. Nor is it easy by any private efforts to get out of the false system thus established. If a publication is started on the principle of careful selection and skilful exhibition of decisions, it is easily undersold by another which gives a greater quantity of unselected and undigested matter; for it is all equally law. If buyers could choose, they would choose only that which was really instructive; but under the supposed system of free-trade, they have no choice. The result is that the bad Reports drag good ones down to their own level; those who would gladly supply good and useful Reports are forced to follow the bad example set them, and to insert a quantity of useless matter, merely because others do the same.

"That such is actually the case here and now, I will show by the evidence of Mr. Pitt Kennedy. I quote from a letter written by him on behalf of the Council of Law Reporting to the Government of Bengal in the year 1872.

"'The practical effects of the system are in evidence before the Government of India. In the first place as to mere pecuniary cost, the Advocate General of Madras, in his recent

pamphlet on Law Reporting, says 'that the cost of obtaining a single set of the ordinary current Reports is at least Rs. 300 per annum.' As regards the far more important effect on the quality of the Reports, and on the practice of those who use them, Mr. Pitt Kennedy, in 1872, wrote thus :—He is speaking of the publication called *The Weekly Reporter* :—

"'Mr. Sutherland's publication is a mere reprint of judgments, never containing any statement of the facts of the cases, or any summary of the arguments of Counsel, and including many cases, illustrative of no principle and wholly unfit to be reported. Unfortunately few of the legal practitioners, in this country, save the Advocates in the Presidency High Courts, appreciate these defects, and an indiscriminate insertion of cases is to too many of these practitioners rather an attraction than a fault. In consequence of this, and in order to obtain subscribers amongst the mofussil practitioners, the Bengal Law Reports were obliged to publish many cases, which on strict principles of selection ought to have been excluded.

"'This, of course, has considerably increased the expense of publication of the Bengal Law Reports, which, in the competition with Mr. Sutherland's series, is placed at great disadvantage; the latter, as before observed, consists merely of reprints of judgments with placita prefixed, thus avoiding all labour, save that of copying, and saving the space required for a statement of the case and of the arguments of Counsel.'

"And again he says—

"'The average number of subscribers to the Bengal Law Reports is 310, and the large number of these (exclusive of those in Calcutta itself) are in places outside Bengal, for these reasons, that the officials in Bengal who might otherwise be subscribers are already supplied by the Bengal Government, and that the mofussil practitioners usually prefer Sutherland's Weekly Reporter *as containing more cases at a lower price.*'

"We have also the evidence of a firm of Law Booksellers who are eminently qualified to speak on the commercial aspect of this question. I quote from another letter written by Mr. Pitt Kennedy:

"'But Messrs. Thacker Spink and Co. state that *if the number of cases reported be considerably reduced, there will be a great falling off in the number of subscribers;* and we are bound to admit that we have frequently heard complaints on account of their having omitted to report many cases which had been decided. These complaints, it is true, prove rather the incapacity of the persons making them to form a judgment, but many of the subscribers hold that opinion. Messrs. Thacker, Spink and Co. think that the reduction in the cost of printing would be trifling in comparison with the amount likely to be lost by the discontinuance of subscriptions.'

"I will only add that precisely the same thing has happened in England, and, indeed, it seems to me the inevitable result of the combined principles I have referred to.

"Now, I don't wish to say an unnecessary word against the Weekly Reporter. It is a very respectable publication, and I believe has been and is very useful in its proper place. Taken on its own merits, it will probably find many

purchasers, and I wish it, as I wish all deserving publications, a fair measure of success. My only object is to show that it ought not to possess that factitious quality of binding authority, which, as we are destitute of authorized reports, we have attributed to all reports. A little while ago the Government, who spend money on the Bengal Reports, forbad the expenditure of public money on the Weekly Reporter, which Mr. Sutherland its proprietor thought very hard upon him. And he now considers that we shall do him a further injustice if we succeed in attaching the quality of authority to those Reports which alone ought to have it. Mr. Sutherland piques himself, I believe quite justly, on giving correct transcripts of the judgments of the High Court, and he contends that whatever the High Court have thought fit to utter is fit to be embodied in reports that are to govern the law of the country. He forgets, I think, that a Judge's primary duty is to decide the dispute between the parties, and that a judgment may be an excellent settlement of a dispute, and yet throw no light on the law. I will, however, give a few instances of the sort of case which this gentleman finds it useful to insert in his Reports, and the Council will judge for themselves whether they are useful additions to the law or not.

"Here is a case. A Principal Sadr Amín decided for the plaintiff. The District Judge reversed him, and assigned as the only reason that the plaintiff ought to have produced a specified document. On special appeal by the plaintiff, the High Court found that the reason was absurd, for no such document existed; still they said, there might be reasons for the reversal, and they remitted the case in order that the District Judge might state what his reasons were. When the case got back to the District Judge, he conceived that the High Court intended him to alter his judgment: and so he confirmed that of the Principal Sadr Amín, assigning no reason at all. Of course there was another appeal, this time by the defendant, and of course the High Court again remitted the case to the District Judge for a statement of his reasons.

"The whole history of this struggle of the High Court to make a stupid or perverse man do his duty is given in the Weekly Reporter. It is a most proper subject for publication, and may well find a place in a newspaper, or in any other vehicle for the information of the day. But I need hardly insist on its utter uselessness in a work intended to form part of the general body of law.

"Take another case. A decree awards to the plaintiff, in satisfaction of a money claim, a portion of the defendant's land called Plot 2, and goes on to say that if the claim is not satisfied by Plot 2, the plaintiff may enforce the remainder against Plot 1. The plaintiff took a portion only of Plot 2, and then

tried to get possession of Plot 1. On application to the High Court, it was declared that he could not do so. But why should we have among our laws a declaration of the meaning of a very special decree, of no sort of interest to any body but the parties, and on a point so plain that nothing but the bias of self-interest could have caused a dispute about it? A great number of cases come before the Courts, not because there is any difficulty in them, but because one side or the other is bent upon doing wrong. The authority of the Court is wanted to get justice. But we do not want the history of such cases in our permanent Reports.

"In a third case, Mr. Justice Phear opens his judgment thus:—'The question in this case is a very simple alternative question of fact, namely, whether certain land belongs' to one person or to another person. He then reviews the evidence in detail and decides the case in favour of one or the other. Now what possible light can it throw on the law, to know how a very simple alternative question of fact was decided on a particular occasion? The opening sentence of the judgment is enough to show that, however useful it may be to publish it, it should find no place in a work of authority.

"I will give the Council one more specimen. This is a headnote of a case. 'An indivisible tenure cannot be split up into parts with a view to the institution of different suits against the tenants for arrears of rent.' The proposition is intelligible, and commands assent, but one looks with some curiosity to see on what grounds it was disputed. Well, on looking into the report, I find that it never was disputed at all. The sole dispute was one of fact, whether the particular tenure was or was not indivisible. Having found that it was indivisible, the Court experienced no further difficulty in applying the law to the facts.

"There are a great many cases of the same kind, but I should only weary the Council by giving further specimens. Probably, more than half the reported cases might be omitted on the ground that, considered as moulding the law, they are unimportant or wholly inoperative. It may be useful to the parties or agreeable to some sections of the public that they should be published. Ephemeral publications for this temporary purpose may, if they do their work well, be worthy of praise and encouragement. But to let them take their place among the laws of the land can only be embarrassing. To treat them in such a manner as practically to compel a whole profession to buy them is oppressive. And it is from such an embarrassment and such an oppression that we wish to give relief.

"There is also another great fallacy about reports of this kind; the supposition namely that if only you have a true account of what the Judges said, you have a true account of the decision. Now, there are very few occasions on

which a Judge thinks it necessary to make such a statement of the facts and the arguments as to make his judgment a full exposition of the case. He would usually waste much time if he did so. But a judgment without the facts, like a Counsel's opinion without the case laid before him, is apt to be very misleading. If I were asked what is the most essential part of a good report of any decision, I should say without hesitation a full and accurate statement of the facts. Next to that generally comes the reasoning of the Judge, but that depends upon circumstances; the arguments of Counsel are often of great importance for a due understanding of the case.

"The Council will remember a recent discussion at this table as to the meaning of a passage in a judgment, which was only to be explained by reference to the frame of the suit. On turning to the report, we found nothing said about the frame of the suit, or indeed about any other fact; so that the badness of the report made the judgment worse than useless, actually misleading on that point.

"But I can show you by illustration from the columns of the Weekly Reporter what mere heaps of rubbish are reports of judgments without the facts.

"In an early volume is the report of a case (we may call it case A) in which Counsel cited another case (case B) from another publication framed on the same principle of giving copies of judgments without the facts. Upon this the Court says, 'The facts of the case are not given: and we are by no means sure that the marginal note correctly represents the ruling of the Judges.' And so they pay no attention to case B. Well, time runs on, and in its turn case A comes to be cited to the High Court. The only observation they make is 'We do not know the facts of the case,' and again they pay no attention to case A.

"I ask then why such reports, only cited to be treated as useless, should enter into our system of law making, and whether it is wise or fair to anybody to let them swell the mass of our law, if we can prevent it.

"Of course the cases that I have cited are mere illustrations; their number, as I am informed by gentlemen who have the best means of judging, can be multiplied indefinitely. I hope the Council will be of opinion that I have said enough to show that it is worth our while to make an effort to prevent publications such as these, useful as they may be in their own way, from becoming part and parcel of the law of the land.

"I ought not, however, to quit this part of the subject without reading to the Council a passage from a letter with which Mr. Sutherland has favoured me, and which gives his own view of the status of the Weekly Reporter:—

"'The fundamental principle on which the Weekly Reporter has been conducted ever since it was commenced in 1864, is to publish no case in which there was no principle of law. No

one has ever contended on behalf of the Weekly Reporter that all the cases therein published were meant to serve as precedents. The great merit of the Weekly Reporter, and the reason why it has met with so much favour in the Mofussil, not from the practitioners there merely, but from the Government officials who have subscribed to it privately when they have been prevented from subscribing to it publicly, is that it contains cases which, though they may not answer as precedents to be judicially cited, supply the want, so greatly felt by inexperienced administrators of the law of Guides or Text-books available to English lawyers.'

"Well, but if it be the case that this publication is taken not for the sake of quoting precedents out of it, but for the sake of instruction, in the first place I am glad it should be so; and, in the second place, nothing that I shall ask the Council to do will in the slightest degree interfere with its sale as a work of instruction.

"Such then being the state of affairs, what is the remedy? I dare say that Hon'ble Members have seen a pamphlet, I need hardly say an ably written one, lately published on this subject by the Advocate General of Madras. After stating his view of the condition of things he says—

"'The remedy which I venture to suggest for this state of things is three-fold—(1), a single set of reports for the whole country, edited by a Central authority; (2), increased participation by the Judges in the work of legislation; (3), the substitution of legislative enactment for reports in all cases in which the decision turns on the interpretation of the written law.'

"Now, as regards the second of these proposals, I do not think that either the Government or the Judges see their way to accomplish it. As regards the third, it is in some degree put in action, as, for instance, by the Act for the amendment of the Criminal Procedure Code, which is now pending before this Council. There we propose to take a few judicial decisions and embody them in the Code. But this remedy can only be partially applied. In the first place, you will observe that Mr. Cunningham only proposes it for the written, that is the statute, law. And even as regards this branch of law, there are considerations which would prevent any but a limited reliance on it. There are many cases very useful in Reports, where all their proper qualifications and shades of meaning can be developed, yet which hardly admit of condensation into propositions of law. It would be difficult to keep so well abreast of judicial decision as to dispense with reports, unless it were by such speed as would carry with it great risk of error, and by such incessant fidgetting and patching as would lead other people to vote us, if indeed we did not vote ourselves, a public nuisance. Moreover, we cannot overlook the ingrained tendencies of English lawyers, and I may add of English Statesmen and Englishmen generally. We are always anxious to make every step onward square with the past, and to decide everything by authority and example rather than by pure reasoning. Accordingly, in all departments of life our tendency is to hunt for precedents.

I do not discuss here whether this habit is bad or good, but, having English lawyers at the head of our legal system, we must take its existence into account. As for supplying the innumerable applications of rules to ever varying facts by short propositions or even by illustrations, the task would, I think, be impracticable. And if we attempt to cut off our lawyers from the comfort of precedents to be found in reported cases, I believe we shall fail, and that the law will more than ever fall under the dominion of irresponsible Reporters and bad Reports.

"The first of the three remedies is what we are proposing to try. The Government purposes to establish a system of reporting on such principle as may give both to it and to the Judges their due share of responsibility and of control. We hope thereby to increase the usefulness of Reports by bringing a greater amount of skill and care to bear upon their construction, and to diminish their number by rejecting unimportant cases. If so, we shall also decrease expense to their buyers, which I see that the Advocate General of Madras states to be at least rupees 300 per annum.

"I have seen objections made to a Central Editor on the ground that many cases have a local character. Indeed, a friend of mine, an able and eminent Judge on the Bombay side of India, has written to me on this subject, and in this sense. He says there is probably not a subordinate Judge in all his Presidency who takes the Bengal Law Reports, and perhaps but two who takes the Calcutta Weekly Reporter. And he fears that, with a Central Editor, Bombay lawyers will be saddled with the expense and bother of decisions on the Bengal Rent Law, or something equally useless. Now, all these considerations seem to me to supply arguments, not against, but in favour of a central authority. Under the present system, a Bombay lawyer must either forego what is useful to him (as it seems they do), or take what is useless. It cannot be expected that a Bengal Law Reporter shall publish one volume for general use, and another for provincial use. But if you have an authority acting for all India, he will of course carefully distinguish between cases which have a general bearing, and those which have only a local bearing, and he will publish them in separate volumes; so that the Bombay lawyer will have an advantage which he has not now; for he will be able to get the Bengal decisions which have a general application, and be freed from those which do not apply to Bombay.

"It is not for the purpose of establishing this system, but to aid the system, that the action of the legislature is asked for. We can aid it in two ways.

"First, with respect to the binding authority of Reports. When we get a set of Reports under authorized and responsible management, it will be fair to say that no others shall be of such authority that the Courts shall be bound to hear them cited or treat them as binding. And the practice of so treating

all Reports is so inveterate, that though perhaps a declaration of the legislature is not absolutely necessary for its abandonment, it is very unlikely to be abandoned without such a declaration.

"The other point is one on which practical inconvenience is now felt. From historical causes a decision of a High Court in one Presidency is not obligatory on subordinate Courts in another. The result is that you may have an important gloss upon the law in Madras, such an one as would be inexpedient to attempt to embody in a Statute, and yet be left quite uncertain how the same point would be treated by a District Judge in Bengal. We propose as a portion of the more general and national system of reporting, to say that the reported decisions shall carry the same authority in British India as they now do in their own Presidency.

"For these two purposes I ask leave to introduce a Bill. The exact mode by which they shall be effected will be subject for comment when the Bill is introduced."

The Motion was put and agreed to.

PORT-DUES ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to amend Act No. XXII of 1855 (for the regulation of Ports and Port-dues). He said that the occasion for amending that Act was this. Act XXII of 1855 drew a distinction between the port itself and the navigable channels which led up to the port; and some of the provisions applied to the port itself, and others to these navigable channels; while some applied to both. Under section twelve of the Act, there were provisions which forbade vessels above a certain burden from moving, excepting they had a pilot on board, or they were authorized by some authority mentioned in the section. But that applied to the port, and not to the navigable channels leading to the port. It was found desirable to have the same provision with regard to the navigable channels. He was not in a position to say why those provisions had not been made to apply to these channels; but he thought it was more likely to have been by accident than by design. At all events, it was now found convenient to extend the power of the Port authorities in that respect.

Another matter in which the Act would require amendment was mentioned by him when he was calling attention to the report of the Select Committee on the Burma Municipalities Bill. The authorities in a Port town were in the habit of giving assistance to sick sailors on board ships, and they generally made a collection by way of contribution from the owners of ships. Some difficulty had been found in enforcing that arrangement; and it was

proposed that these charges should, like other charges, be recovered before the ship got its port-clearance. A similar difficulty was found in Calcutta a few years ago and had been amended by Act III of 1869 of the Bengal Council which we were told had worked very well. The same difficulty had now arisen in Burma, and the Local Government of British Burma asked for a law equivalent to the law passed in Bengal. It was found that the matter was clearly of more general concern, and did not only regard the ports in Burma or the port of Calcutta. There must be the same difficulty arising in other ports, and it was desirable to amend the general law in that respect. At the same time as the matter of ports was the subject of a good many scattered Acts, the opportunity would be taken to see if we could not usefully consolidate the law on the subject.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 24th March 1874.

CALCUTTA;
The 10th March 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt. Govt. Printing,—No. 430 L. D.—13-3-74.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 24th March 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble B. D. Colvin.

PRIVY COUNCIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE moved that the final Report of the Select Committee on the Bill to consolidate and amend the law relating to the admission of appeals to Her Majesty in Council from judgments and orders of the Civil Courts, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as finally amended be passed.

The Motion was put and agreed to.

BURMA MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to provide for the appointment of Municipal Committees in Towns in British Burma, and for other purposes, be taken into consideration. He had explained on the last occasion the only points which seemed to him to be of importance, and which the Select Committee considered it necessary to bring to the attention of the Council in their report of the alterations made in the Bill.

The Hon'ble MR. DALYELL said when his hon'ble and learned friend presented the Report of the Select Committee on this Bill, he explained the circumstances under which it had been deemed advisable to restrict the amount of taxation for the general purposes prescribed by the Bill to the actual amount of town taxation now levied in British Burma. On that occasion, he (Mr. Hobhouse) gave several good and valid reasons in favour of the course adopted, but he did not, so far as MR. DALYELL could recollect, mention a statement which had been made by the Chief Commissioner in a letter which he had addressed to the Committee on the subject of the Bill. In that letter, Mr. Eden stated that no fresh taxation was intended or desired, but merely the regulation of the existing taxation and the bestowal on the people of some share in the administration of the affairs of their towns which now rested in the hands of the Government officials. When MR. DALYELL told the Council that the present town taxation of British Burma, which apparently was levied entirely at the will of the executive and without any express legal sanction, had been raised in ten years from two to five lákhs, he thought they would agree that there were strong reasons for Mr. Eden's moderation, and that the Select Committee had exercised a wise discretion in limiting the amount of taxation for general purposes to the amount at present actually collected in the towns. He also found by reference to a valuable report on the taxation of British Burma from the pen of Colonel Duncan, the Secretary to the Chief Commissioner, which was circulated to the Council last year, that as regards the incidence of local and imperial taxation, the inhabitants of British Burma were at a disadvantage with other parts of the empire. Colonel Duncan also stated that the well-to-do people in most towns now paid a tax of from seven to ten rupees according to the size of the town, and that in Rangoon a petty shopkeeper paid as much as eighteen and a half rupees as municipal taxation: and there were additional grounds for the course which had been taken with regard to this Bill. Further, the Council would recollect that at a recent meeting of the Council, an hon'ble member, who was not in his place to-day, when alluding to the Bill in its original form and to the Burma Fisheries Bill, stated it as his opinion that neither of those measures were such as were likely to foster or encourage the advancement of a young province like British Burma which had, he thought, a great future before it, and he indulged the hope that nothing like legislation of a repressive or discouraging character would be carried out. MR. DALYELL then expressed his general concurrence with the opinions expressed by his hon'ble friend, and if the Bill now about to be passed had involved an increase of taxation in Burma, he would not have supported it. As the Bill now stood, he would have much pleasure in seeing it take its place in the Statute-book.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said the Council had heard from his hon'ble and learned friend, Mr. Hobhouse, the objects and reasons of this Bill. No doubt any new taxation was very distasteful to the Natives of India in general. But as the Bill now proposed did not in any way increase the burden of taxation in British Burma, but was only intended to legalize and regulate the existing taxation, as had hitherto been done by the laws designed for other parts of India by the hon'ble Mr. Hobhouse and his predecessors, he had much pleasure in giving his assent to the motion before the Council.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam, be taken into consideration.

His Honour THE LIEUTENANT-GOVERNOR said that, as he had not had an opportunity of discussing or carefully considering this Bill, he was not in a position to speak of it in detail. As regards the form of the Bill, he was inclined to doubt whether a change made in Committee was expedient. He believed that the Bill as originally introduced provided that it should be in the power of the Governor General in Council to decide by what authority, whether by the Lieutenant-Governor of Bengal, the Government of India, or the new Chief Commissioner of Assam, any matter pending at the time of the transfer should be decided. Apparently, as the Bill now stood, that power of enabling either authority to decide pending questions had been restricted to questions arising under the Gáro Hills' Jurisdiction Act. He had only to suggest that a doubt arose in his mind whether other questions of a similar character might not occur; but he felt he might safely leave the matter in the hands of his hon'ble friend Mr. Hobhouse. HIS HONOUR had no doubt that Mr. Hobhouse had taken good care that there should be no practical difficulty hereafter.

There was only one other point to which he would wish to refer, and that was this. He would submit to the Government of India and to the Council that, in matters of spelling, some uniform course should be adopted. The districts which were the subject of the present Bill were lately the subject of a notification of the Governor General in Council in the Home or some other Department, which he could not well recollect, but it was certainly some other than the Legislative Department, and in that notification they were spelled quite differently from the spelling in the Bill. He would only say that whichever might be right or wrong, it was almost, he might say, indecent that the Government of India in the different Departments should ostentatiously spell the names of well-known places in so many different ways; that one Department should adopt the well-known spelling which was adopted by people in general, and another should enter into the elaborate system by which these names were very much disguised. He was glad to learn that the long-suffering of the Members of the Committee of this Council, who had submitted to a good deal in this respect, was at last exhausted. He was glad to observe the spelling of the word "Cachar", which was formerly spelt "Kachhár" in the Bill, was now restored to its original shape, C-a-c-h-a-r. That "K-a-c-h-h-á-r was too much for the Select Committee, and it was restored to its original spelling. But apparently a compromise was made in respect to the spelling of other districts in regard to which the change was not so flagrant, and which were left to the mercy of the Legislative Department, as to the regulation of the spelling. Now, in this matter of spelling, a considerable latitude had been left to the Local Governments, and by what he might call a sort of consensus of those Governments, the spelling of well-known districts had been preserved; the old well-established spelling had been retained. That had been done in the North-Western Provinces and in Bengal, and he had no hesitation in saying that if Assam still belonged to Bengal, that would have been done in Assam. The Chief Commissioner now established by the Government of India had not had full opportunity of considering the matter. He would submit that it was not desirable that in this interregnum the Legislative Department should step in and alter the names of places which were not only the names of well-known districts, but also the names of a large number of Tea and other Companies well-known in the London Stock Exchange. Such a course might, amongst other things, cause a depreciation of shares in such well-known Companies as the Nowgong, Durrung, and several other Tea Companies. Were the names of those Companies to be severed from the names of the well-known districts with which they were associated, such a course might create a panic in the money-market, and it seemed most undesirable that we should depart from the well-recognized spelling of the names of those districts.

The Hon'ble MR. BAYLEY said there was only one point in regard to which he wished to make a few remarks, namely, the notification from the Home Department to which the Lieutenant-Governor had referred. He believed that notification had carefully kept to the exact spelling which the Government of India had authorized. Without the notification before him, he did not remember what that spelling precisely was. In the Bill some compromise had certainly been made as to the spelling of the names "Durang" and "Naugáon," and he believed that, whatever the change from the authorized spelling might be, it was very slight. So far as the new Province was concerned, he did not see why they should be left to make this not very important reform.

The Hon'ble MR. HOBHOUSE said that, with regard to the first point which was mentioned by His Honour the Lieutenant-Governor, the Bill was introduced in the form in which sections 1 and 2 stood now. It was an earlier draft to which the Lieutenant-Governor referred. It was afterwards found that some arrangements were pending for making compensation to zamíndárs under Act XXII of 1869. That was the only point in which the Bill as it now stood varied from the Bill as introduced. What was new in the Bill was the power given to the Lieutenant-Governor of Bengal to carry out the arrangements made with the zamíndárs and others in the Gáro Hills. Some arrangements were actually pending, and it would be very inconvenient to take them out of the Lieutenant-Governor's hands. He thought His Honour might rely on it that the matter had been carefully considered both before and since the introduction of the Bill.

With regard to the matter of spelling, the Lieutenant-Governor could not attack any one more willing to be defeated than MR. HOBHOUSE. As far as he was concerned, his sympathies were with the Lieutenant-Governor. The citadel had a traitor inside. But he (MR. HOBHOUSE) really knew very little of the matter. What he did know was his mother-tongue, and he had a great prejudice against seeing English letters used to represent sounds which they never by any chance represented to the English eye; for instance, he did not like to see a tub spelt "t-a-b." He must leave the matter to be fought over by those who were more learned than himself. All that he could say was that if the exertions of the Lieutenant-Governor did result in putting oriental names and words into a more familiar occidental shape; if he did succeed in bringing them into a shape more intelligible to English ears and eyes, it would be a very good thing.

Major-General the Hon'ble SIR H. W. NORMAN concurred in the observations of the Lieutenant-Governor in regard to the matter of spelling.

He would observe that it was quite contrary to the Resolution of the Government of India that any alteration should be made in the spelling of the names of Cantonments from the ordinary spelling which had prevailed for years past. He thought that one or two of the names in this Bill were the names of Cantonments. They were spelt quite differently from the usual practice: perhaps the Legislative Department would bear that in mind.

His Excellency THE PRESIDENT observed that it would be inconvenient to pass this Bill if there was any doubt as to the proper way in which the names of the several districts were spelt. It would therefore be advisable to postpone the passing of the Bill in order that the spelling might, if necessary, be altered in accordance with the views of the Government of India.

The consideration of the Bill was then postponed.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. BAYLEY presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to European Vagrancy. He said the Select Committee had made some changes in the details of the Bill which had almost all been made in accordance with the suggestions of the Local Governments. None of these changes materially affected the general principle of the Bill. There were one or two matters which needed explanation, although they did not refer to the amendments introduced by the Select Committee, but related rather to the general principle of the Bill and the plan upon which it was framed. It would be better, however, to defer his remarks as to these until the time when the Report of the Select Committee would be taken into consideration.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOBHOUSE, in the absence of the Hon'ble Mr. Ellis, asked leave to postpone the presentation of the preliminary Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-Revenue.

Leave was granted.

INDIAN LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their

authority, and moved that it be referred to a Select Committee with instructions to report in two months. He said that he had explained to the Council on the last occasion that the quantity of legislation required on this subject was small, and they would be glad to see that the Bill was a short one. He must now explain to them the lines upon which the Bill was laid down. In the first place, they would observe that a late day was fixed for the Bill to come into operation, namely, the 1st January 1875. The object of that was to give those who were now engaged in the publication of reports time to wind up their affairs, such as the Bengal Law Reporters. If they were allowed to the end of this year, they would be able to place their affairs in a satisfactory footing. Then, coming to the substance of the Bill, he should like, in the first place, to read a few remarks which had been furnished to him by a learned Judge of the High Court, Mr. Justice Markby, respecting the operation upon which we were engaged, remarks which conveyed a very useful warning and caution to us. He said:—

"The *authority* of a judicial decision has never been recognized, as far as I am aware, by the legislature in any country except in a very limited degree, and under peculiar circumstances. The *responsa prudentum* were not judicial decisions, but resolutions upon doubtful points by certain persons *quibus condere jura permissum erat*. The *arrêts* of the *Cour de Cassation* are confined to the corrections of faulty procedure and of any contravention *expresse du texte de la loi*, i. e., of the Code; and the *Cour de Cassation* is established *auprès du Corps Legislatif*, and may correct erroneous decisions, whether the parties choose to appeal or not. The Sadr Díwání Adálat could issue 'constructions' upon the Regulations (our *texte de la loi*) which were final and conclusive (Regulation 10 of 1796, s. 3), but when this Regulation was passed and until long after, the Sadr Court was presided over by the Governor General or by a Member of Council, and was in close relation to the legislature."

Then after referring to some other opinions he continued:—

"A consideration of all this leads me to doubt whether more good than harm would be done by legislating on this subject. The Mofussil Judges are no doubt far too prone to see in every dictum of a High Court Judge a rule for future guidance, and your proposition would, it is true, separate off and reject a number of decisions or expressions of opinion which they ought not to be bound by. But will not the actual authority of cases selected for publication be too much increased? Increased to some extent it will be I cannot doubt; and I am not prepared to see too much rigidity given to the decisions of even a Full Bench."

These remarks appeared to MR. HOBHOUSE to have a great deal of truth and wisdom in them. It was quite true that it was a new thing, as far as he was aware, for the legislature to recognize in terms the authority of judicial decisions; and he agreed that it would be a bad thing if we were to take away from judicial decisions that quality of flexibility and adaptibility which they

now had and to give them the same rigidity as Statutes, so that every word of them must be weighed by Judges before they could decide a case. But there remained the fact, and a very important fact, in our constitution, it was, that the law was being constantly moulded by judicial decisions, which operated very much as they were reported, and we should hardly err if we recognized that fact and treated it as established without endeavouring to alter its nature. Now the Bill endeavoured to follow that principle, and not only was language used in the early part of it which merely referred to judicial decisions and their authority as existing facts, but section 4 contained an express caution that "save as provided by section 2, nothing herein contained shall be construed to give any judicial decision any further or other authority than it would have had if this Act had not been passed." Then, what was done by section 2? It was not a long one, and he would read it to the Council :—

"Every judgment delivered on or after the said day by any of the said High Courts (whether by a Judge sitting alone, or by a Division Court, or by a Full Bench) and reported in the said Indian Authorized Law Reports, shall have the same authority in all subordinate Courts beyond the limits of the appellate jurisdiction of such High Court as independently of this Act it would have within such limits."

So that the Council would see that the authority of decisions was, as regards its quality or nature, left it as it stood before, and the Bill only extended the geographical area of its operation. He thought we might feel confident that, in the hands of an intelligent man, a law framed as this was would not be construed amiss, that the Judges would render an intelligent and loyal obedience to the decisions of the superior Courts according to the essence and spirit of those decisions when applicable to the cases before them, and would not, any more than now, be slaves to the letter, and regard every by-word which fell from a superior Court as sacred, or as intended to express the full and deliberate mind of the Court and to operate as a guide to the rest of the world.

The Council would also observe that in that section the Bill only mentioned subordinate Courts as those to be bound by the authority of judicial decisions. The reason was that there was considerable nicety of distinction in the various phases of the High Courts, and in the amount of authority to be attributed to the decisions of a single Judge, a Division Court, or a Full Bench; and it was better that the High Courts should settle these things for themselves. Moreover, it was not the case, as he had seen it supposed in several communications upon this subject, that we aimed at binding any one High Court to follow the decisions of any other High Court. At the present moment, the High Court might change its mind and differ from itself; it had

a degree of freedom which, in MR. HOBHOUSE's opinion, was quite necessary for the due working of our judicial system, and which he did not wish to encroach upon. The main and primary object of the section was to give a more efficient and regular guide to the subordinate Judges, so that when we got a valuable decision in one Province, it might be used to guide the Judges in another. He thought that this system might safely be left to be worked out to its proper result by the High Courts themselves. Practically, though indirectly, it would secure greater uniformity in the decisions of the High Courts, because it would, if only for the purpose of testing what subordinate Judges had done, compel the High Courts to give adequate consideration to one another's decisions; and this would lead to greater uniformity, and also to the prevalence of those decisions which were found on discussion to be most reasonable and expedient.

The remaining section of the Bill, section 3, was as follows:—

"No Court shall be bound to hear cited or shall receive or treat as an authority binding on it the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council."

He knew that there were many who would say that this section was not stringent enough, but that we ought to prohibit the citation or even the publication of any unauthorized reports. As regards publication, MR. HOBHOUSE had already given his reasons for thinking that the publication of reports was an excellent object, and for wishing well to all such publications as the public could be induced to read. With regard to citation, it seemed impossible to prohibit the citation of voluntary reports any more than the citation of any other work which did not carry with it binding authority. It was impossible to say beforehand what might or what might not be suitably cited in the course of a forensic argument; and if any work not professing to have authority might be cited, so might volunteer reports. It was easy to conceive cases in which such reports might be exceedingly useful to illustrate a position or to point an argument. The utmost we could do was to free the subordinate Courts from the shackles which practice and custom now imposed upon them, and to say that as a Judge might listen to a passage from Hamlet or Paradise Lost, or Hallam's Constitutional History, or Preston on Abstracts, or any other work, technical or not technical, and as if he listened to it, he might either adopt or reject the conclusion which was pressed upon him, so he might deal with a volunteer report. The objection might be raised that this was only what the Judges might do now, and that the Bill was idly telling them no more than they knew without it. Of the superior Courts that might be true in terms.

Of the subordinate Courts it was not true even in terms, for a subordinate Court would find itself in a very false position if it refused to hear, or be bound by a work which its appellate Court was in the habit of receiving as authority. We could therefore relieve a subordinate Court from the terror of being held wrong and having its judgment reversed, because some obscure case was cited before it which it refused to receive as binding authority. Even as regards the superior Courts, the proposition was not practically true. It required much more effort and unanimity than had ever been found in a large body of men not guided or supported by any declaration of the legislature or act of the State, to treat unauthorized reports uniformly and persistently as being without authority, and put their citation on the same footing as the citation of other general matter. If, however, we gave them that which was published under proper authority, we might hope with a reasonable amount of skill and care, and at the same time told them they were not bound to receive anything else as of authority, we might hope for good results. MR. HOBHOUSE acknowledged that in this matter we were in the hands of those who might and ought to regulate the conduct of legal business, but by doing what we proposed, we might hope for the assent of all reasonable men, and he did hope they would, in the course of time, settle the practice on a more reasonable and satisfactory footing than that upon which it was now.

These were the three objects of the Bill. They were to give the reports a larger area of authority than they now possessed; to prevent unauthorized reports being brought forward in such a way as to constitute binding authority on the Judges, and at the same time to provide a caution against the Courts attributing undue weight to those reports which were authorized reports. It would be for the Council to consider whether a measure with these objects should pass into Committee.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE said he had gone over this Bill very carefully, and he thought that a law of this kind was absolutely necessary for the purpose of placing the Indian Law Reports on a proper footing. After the able and lucid manner in which the Hon'ble Mr Hobhouse had explained to the meeting his reasons for introducing the Bill, RÁJÁ RAMÁNÁTH TAGORE had very little to say on this important question. But in looking over the Bill, he observed that there was no provision or scheme laid down to enable the Government to confer the necessary authority upon any particular reports. If the omission to which he had referred was a defect, which he hoped it was not, it would no doubt be supplied by the Select Committee. In all other respects, he entirely approved of the Bill.

The Hon'ble MR. DALYELL said the difficulty which had been adverted to by his hon'ble friend, Rájá Ramánáth Tagore, had occurred to him when looking over the Bill this morning. He did not see who was to be the authority to decide as to what were to be authorized reports. For instance, who was to decide between the High Courts of Calcutta and Madras on a ruling which possibly might not be precisely the same, though upon the same subject? Which of those rulings was to be reported? He did not think the Madras High Court would be satisfied to agree to every ruling of the Calcutta High Court, and similarly the Calcutta Court might not agree to every ruling of the Madras Court. Yet whichever of these was accepted in the authorized report, would be binding upon the subordinate Courts of both provinces. If a ruling of the Calcutta Court in which the Madras Court did not agree became an authorized report, then all the Madras subordinate Courts would be obliged to attend to that ruling, although their own High Court might not concur in the propriety of the decision. That seemed to MR. DALYELL to be a difficulty, but possibly the hon'ble member in charge of the Bill might have some means of disposing of it. He merely threw it out as a point for the consideration of the Select Committee: he thought it advisable that the authority to whom the task of selection was to be entrusted should be laid down in the Bill.

His Honour THE LIEUTENANT-GOVERNOR said it was perfectly true that, as the hon'ble and learned member had said, this was a short Bill, but it was not an innocent Bill. The importance and effect of the Bill was in inverse ratio to its length. A short Bill might make a very radical change in the law without providing any safe-guards, and as he should not have the opportunity of considering this Bill in its later stages, he would wish now to express his opinion that the Bill was not a satisfactory Bill, and was not such a one as he could agree to. The great blot in this Bill was that which had been stated by the hon'ble members who spoke before him. No safe-guard was provided; no machinery was provided: we were told nothing as to the manner in which the decisions were to be selected, or the process by which some decisions were to be converted into authorized decisions, and others were to be rejected. Therefore, it seemed to him that the Bill in the shape in which it was put was a Bill not only of enormous importance, but that it was a radically unconstitutional and revolutionary Bill. It placed nominally in the hands of the Government of India, but really in those of some one else, the power of selecting from the very numerous decisions of all the High and other Courts, and declaring which should be reported as authorized reports and should be cited and be binding upon the subordinate Courts, and which should be rejected, and, as it were, snuffed out, put aside, and put out of Court altoge-

ther. He believed the effect would be, that not only nine out of every ten but ninety-nine out of every hundred decisions would be put out of Court altogether, and that by an authority altogether unknown to the Court and the public, so far as we yet saw. The reporter would have the power of sitting in judgment on the Judges and of saying which should be taken as good and binding decisions, and of snuffing out and making altogether uncitable ninety-nine hundredths of the decisions which were passed. To understand the enormous effect of a Bill of this kind, we must consider the nature of the superior Courts of this country. If they consisted, as in most civilized countries, of well-recognized and concentrated Courts of the highest authority, whose decisions were of very great weight, we might delegate to the Reporters the power of selecting what were important and what were unimportant decisions. But that was not the case here. Not only had we a great variety of High Courts, but they were not single Courts of themselves. The High Court of Calcutta was half a dozen Courts, each sitting and deciding independently of one another; for many purposes as many Judges as there were, so many Courts were there. Moreover, there were a good many Judicial Commissioners and Financial Commissioners, all of whom exercised the authority of a High Court. The consequence was, that we should have at least twenty or thirty, probably more, High Courts of co-ordinate authority, all deciding each in their own way: and we had unfortunately in this country no Court where those decisions could be brought under review and revised by a full and sufficient tribunal. Such being the fact, if you put into the hands of any one authority the power of deciding which of these decisions should be treated as authoritative, and which were to be rejected and snuffed out, you gave that authority an enormous power over the superior Courts of the country: you made him in fact Judge over the Judges, and so far as HIS HONOUR could see, the authority exercising this enormous power was to be irresponsible. HIS HONOUR had always held that, in this country, a very large power should be exercised by the supreme executive authority of India; and he would be quite willing to accept the dogma set forth in the Statement of Objects and Reasons accompanying the Bill, that law-reporting should be regarded as a branch of legislation, and that judicial decisions should be reported by sufficient authority. If the law was really to be settled by the Government of India he should not object. But it seemed to him that, practically, this Bill in no degree moved in that direction. If the Government, acting in its executive capacity, might set forth the interpretation of the law, he should be perfectly ready to accept a system of that kind; but in reality, although this Bill proposed to give that power to the Government of India, it was not to be exercised by the responsible Government, but, as he gathered from one of the papers bearing on this Bill, by an individual who was to be called

"the Chief Law Reporter," and HIS HONOUR understood that some very able and estimable lawyer was to be provided with that place. As far as the Bill was concerned, all that the Council knew was, that the Government would create the man and would do nothing more, and having created him, he would be the person who was to sit in judgment over the Judges, and who was to decide what was good and what was bad law. HIS HONOUR should like to give an illustration of the manner in which a system of this kind was likely to work. He would take a case which had been already in many occasions referred to as being a case to which a system of this kind might be applied. He alluded to what was known as the great Rent Case. Let us take the history of that case. It was a case in which the questions involved were of enormous importance, affecting the whole agricultural population of great Provinces, and upon which depended the decision of a large mass of cases. A decision was arrived at by one very eminent Judge, one of the most eminent Judges in fact who had sat in the High Court. That decision startled people: it went a long way in one direction; it was a clear authority and apparently settled the law. Presently, cropped up other decisions of other co-ordinate Courts, and they decided in a different manner. Consequently, it became apparent that there was a great variety and difference of opinion amongst the Judges of co-ordinate Courts: a case was then taken up, and all the fifteen Judges of the High Court sat. The result was that fourteen Judges came to a decision adverse to the opinion of that one eminent Judge, who still retained his own opinion. Now, what must have happened if this Bill had been law? Either the decision of the eminent Judge who first passed a decision on the point would have been accepted by the Law Reporter, and would have been promulgated as binding authority, and other decisions which were opposed to it would have been put out altogether; or the Law Reporter would have selected any other of those decisions, and put it in the place of the other, and we should have had no opportunity of this great question being thoroughly discussed, and coming to the decision which eventually settled the matter. The settlement which we should have had of this great question would have been a settlement by the Law Reporter, and not by the fifteen Judges sitting in solemn conclave on the whole matter.

On one point he entirely agreed with the Hon'ble Mr. Hobhouse in the view which he had taken. It was most undesirable that the lower Courts should be burdened with too many authoritative decisions. It was not desirable that the Judges should act by a mere *memoria technica*. So far, something was necessary to be done in regard to the present system of law-reporting. But he also said that the latter part of the Bill which gave binding authority to the authorized reports as distinguished from

other reports, was most dangerous, inasmuch as it indirectly placed these authorized reports in a much higher position than that which any reports now held. It even went to the length of providing that the decision of one High Court should be binding upon the subordinate Judges of the other provinces. He altogether denied that the decisions of the High Court at Calcutta were binding even on the subordinate Courts of the Lower Provinces. At present the decisions of a High Court were binding upon the subordinate Judges of its province, merely so far as they affected the reason of the Court below. The Court might properly look at the decisions of the higher and more experienced Courts for their guidance. But the decisions of the High Court had no absolute authority to bind the decisions of the Courts below, and they had the same authority in the North-Western Provinces, or Madras or Bombay as they had in the Courts of the provinces subject to its control. Inasmuch, however, as the subordinate Judges might look for promotion to the Judges of the High Court and might consequently pay more respect to those decisions than they would otherwise do, in that respect, of course, the decisions of the High Court might be of more binding authority. But otherwise they would have no greater authority in the Lower Provinces of Bengal than in any of the other Provinces of India. The effect of the Bill, although not directly expressed, would indirectly be that the authorized reports would have complete and absolute authority to bind the subordinate Courts all over India and would, in fact, regulate the whole administration of justice. Section 3 was the section which shut off and disposed of the whole of the decisions which were not accepted by the Law Reporter, that was the section which, whilst it gave undue authority to the authorized reports, took away all authority from unauthorized reports. His Honour must express his own view that this Bill ought not to be referred to a Select Committee in the form in which it was put before the Council. He would have the consideration of the Bill postponed, in order that the hon'ble member in charge should deprive it of the character it now bore; that it should be made more distinct, and that he should declare what his views really were, and then the Council would be in a better position to judge whether the system should or should not be carried out.

The Hon'ble Mr. Hobhouse said he would take the objections which had been raised in the order in which they had been made. First, the Hon'ble Rájá Ramánáth Tagore, as Mr. Hobhouse understood him, objected that the Bill made no provision for giving the Executive Government authority to institute a system of law-reporting. The answer to that was that no such provision was necessary. It was perfectly within the competency of the Executive

Government to do that either with or without this Bill. MR. HOBHOUSE had explained on the last occasion that the Bill was only in aid of a system proposed to be established by virtue of the authority of the Government. That system would have no authority of itself. The authority given to the reports was not given by this Bill, nor by any executive action of the Government. It was given by the constitutional action of the Judges which would be left entire and untouched by the Bill. As for the proposed system of reporting it would not affect the essential authority of the Judges. It was only for the purpose of giving to the public in a proper shape so much as of judicial decision as materially affected the law.

Then the Hon'ble Mr. Dalyell seemed to think that some difficulty might arise in the case of contradictory rulings. But in truth there would be no more difficulty than there was now. It was a mistake of the whole plan to suppose that the Reporter was to judge for himself of the goodness or badness of the law contained in each decision, and to take the good and reject the bad. He must report it if it was of sufficient importance; and that was exactly what Reporters did now. Supposing he got two adverse decisions on an important question, he would report both. In the very case put by the Lieutenant-Governor, where he said there was a great difference of opinion amongst competent authorities, it would be the duty of a good Reporter to report the decisions on both sides; and unless the case was one in which the legislature thought proper to interfere, the Judges must take that which they thought was best or most binding on them. MR. HOBHOUSE would illustrate that by a matter with which some present might have been concerned. We were most of us old enough to remember the time when a great number of joint stock companies were started by means of what were called provisional Committees. It was an entirely new thing in the history of England, and raised a great number of new problems of law. The result was a variety of decisions—decisions in the Queen's Bench, in the Court of Exchequer, in the Common Pleas, in the Court of Chancery, conflicting with one another on a variety of important points, and for some time no one could tell with any certainty how the law stood. The legislature did not interfere, and very rightly, if they had, they would certainly have made a hash of it and created greater confusion than ever. It was necessary to place the law on a reasonable footing, such as would satisfy men's sense of justice, and prevent continual struggles to escape from bad rules. But no man was wise enough to see what that footing was. It required many discussions, conducted with reference to concrete cases, and under all the responsibility of having to decide those cases before it was seen on what lines the law should be laid down. Well, the decisions on all sides were reported.

Reporters did not refuse to report what they might happen to think was bad law, but reported all important cases, and gradually by means of appeals and the exercise of the judicial powers of the House of Lords, the law became settled. There were some years of controversy and confusion during which no man was wise enough to see how the law ought to stand. It wanted a great deal of discussion, and when that had occurred often enough, the law got settled on a reasonable and satisfactory footing, and has remained so ever since. The same thing would be done under any good system of reporting. The object of a report was simply to tell people what judicial decisions there had been on any subject; and if any Reporter chose to take it upon himself to say of any decision otherwise fit to be reported that it was bad law and that he would not report it, MR. HOBHOUSE thought, notwithstanding the anecdote of a great man he quoted on the last occasion, that he would not be doing his duty as a Reporter.

The Lieutenant-Governor said we were making a great and a radical change. Where did he find that change? Not in the Bill, not in the Statement of Objects and Reasons, not in the documents connected with the Bill, amongst which there was a letter circulated to the Local Governments containing the views of the Government of India on this matter. The Lieutenant-Governor indeed said that the decisions of the High Courts had no authority in the Lower Provinces, but were only entitled to be received with respect. If that were so, MR. HOBHOUSE thought the Lower Provinces of Bengal differed from the rest of India and from England in that respect. But suppose it was the case that the decisions of the High Court at Calcutta were not binding on its subordinate Judges, the Bill would only continue that practice, and such respect as those decisions were received with would be rendered to them in the North-Western Provinces, in Bombay, and in the other provinces. For the Bill distinctly provided that except as to geographical area, no judicial decision should have any further or other authority that it would have had without the Bill. If, therefore, it were true that the decisions of the High Courts had no authority, then the Bill was a sham and ought not to pass, because it would be of no use whatever. But he would take issue with His Honour in this matter, and he said that it was just an integral part of our constitution, as any other unwritten part of that constitution, that the subordinate Courts were bound to obey the decisions of their superior Courts, and the subordinate Judges would commit a grave error if they refused such obedience and would expose themselves to censure.

What did the Lieutenant-Governor suppose was done under the present system? He said we were taking a great deal of power into our hands. If he

had been able to be in his place on the last occasion, he would probably have been convinced that we were only dealing with a power already existing in the hands of irresponsible persons. MR. HOBHOUSE was then at great pains to show the power actually in the hands of the Reporters, and how a Judge might be, as His Honour said, snuffed out by a bad, or a malicious, or an inefficient Reporter, and how unimportant judgments which ought never to have been reported might be brought into undue prominence. Now, the question was whether, finding that system existing, we should leave it where it was, or entrust it to hands which were likely to conduct it better, with more skill and under greater responsibility. Now, the work of law-reporting was conducted with a view to sale, on a commercial system. The reports were made to sell, and the result was a very large number of bad reports. Under the Government system, it certainly ought to be, he believed would be, conducted with a view to provide the Courts and the profession with the best reports of the most important decisions. That alone was the difference between the two systems, and he must put it to the Council which of those two was the better system.

No doubt the Lieutenant-Governor was entitled to argue that, however much we tried to avoid giving an additional quality of authority to the authorized reports, we could not avoid it. It was a perfectly legitimate argument to contend that though we should not be doing it directly, we should be doing it by a side wind. MR. HOBHOUSE admitted the reality of the danger, and he had commenced to-day by laying before the Council a weighty opinion and warning on the subject. That, however, was the opinion of a gentleman who had not seen this Bill which indeed was not then in existence. What MR. HOBHOUSE did not admit was that the danger was sufficient to deter us from action, or that it could not be sufficiently guarded against. He himself thought the Bill would avoid that danger, which he fully admitted, would, if it really occurred, cause some mischief. He thought the Bill provided against the danger, and that we might trust intelligent men to understand the matter aright. It was for the Council to decide whether they would accept the risk of that one danger of giving too great rigidity to judicial decisions, or would allow the present system to continue of heaps of reports being thrown upon the subordinate Courts and oppressing the subordinate Judges with a pretence of authority which they were never intended to have. The Bill was intended to help the establishment of a better system of law-reporting than the commercial system which was now in vogue, and as such, he thought it ought to go to the Select Committee on the lines upon which it was based.

His Excellency THE PRESIDENT said, "I think the Council can have no doubt of the importance of this Bill, although a short one. It seems to me

that the points raised to-day form a subject both for consideration by the Select Committee, and probably for future discussion in Council. They are both points of some consequence. I should be sorry at the present time to express any decided opinion upon them, without hearing more from those who have taken pains to go carefully and accurately into the whole of the details. In regard to the first point, I believe that the Bill does not attempt in any way to choose between conflicting judicial decisions, or to give any authority to one as against the other. Both would, I presume, retain whatever value they would have if the Bill were not passed.

"The second point, which was raised by His Honour the Lieutenant-Governor, is one, no doubt, of great consequence, namely, whether any steps should be taken to guard against want of judgment in selecting the cases which ought to be reported, whether it is advisable that any special provision to meet the case should be introduced in the Bill, or whether it is possible to provide for it in any other way.

"That point may, I think, be left to the Select Committee to consider, and it can afterwards be discussed by this Council.

"Any idea which might be entertained that the Bill was intended by the Government to provide for any selection, on their behalf, between the different decisions of different Judges upon matters of law, on account of any opinion which might be entertained by the Government as to the merits of those decisions, would be entirely erroneous. Mr. Hobhouse has already sufficiently explained that no intention whatever of the kind is contemplated by the Bill. I believe that the object which the Bill has in view is of very great utility, and I entertain a confident expectation that the result of its consideration by the Select Committee and of our further proceedings in Council will be successful in making a salutary change in the present system of law-reporting."

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority——The Hon'ble Mr. Bayley, the Hon'ble Rájá Ramánáth Tagore and the Hon'ble Mr. Dalyell and the Mover.

The Council then adjourned to Tuesday, the 7th April 1874.

CALCUTTA,
The 24th March 1874.

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Dept.

Office Supdt Govt. Printing—No. 469 L D.—30-3-74.—250

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 7th April 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble B. D. Colvin.

ASSAM CHIEF COMMISSIONER'S POWERS BILL.

The Hon'ble MR. HOBHOUSE moved that the Bill to provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam, as amended, be passed. He said that the Council would remember that the only reason why this Bill was not passed at the last meeting was that some objection was taken to the spelling of the names in the Schedule to the Bill, and it was on that account that this motion stood over. Now the spelling had been subjected to a severe criticism in the proper quarters. Our Military friends with their usual sagacity had attacked one untenable post, and with their usual gallantry had captured it. That post was Nowgong. With that one exception, the spelling had run the gauntlet successfully, and the Bill stood as it was. He had no remarks of his own to make upon it.

His Honour THE LIEUTENANT-GOVERNOR said, as the hon'ble and learned member in charge of the Bill had told them, since this Bill was last before the Council there had been only one amendment in its spelling, and that was a

very great improvement to be sure. The spelling of the word "Nowgong" was a very great improvement upon what it was before, namely Naugáon. But as regards the other districts, the new or compromised spelling had been left. His Honour would only say that in the North-Western Provinces and in Bengal the system had been followed of maintaining the names of districts according to the old established mode of spelling them. Districts were well-known places. He found that some of the names of districts in Assam were spelled in the Bill in the new-fangled manner: they were spelled in a new manner, with certain diacritical marks. It was a mere question whether the Government of India chose to depart from or to retain the spelling of well-known names of districts, or to allow new-fangled modes of spelling upon any system of compromise. He found that Kamroop, was changed into "Kámrúp," and Durrung was changed into "Darrang." If that was the decision of the Government of India he had nothing more to say, it was for the Government to approve or otherwise of the compromise.

The Hon'ble Mr. Bayley believed the spelling now adopted in the Bill was the same as that used in the maps issued by Government, and he thought the Council were right in adopting it.

The Motion was put and agreed to.

EUROPEAN VAGRANCY BILL.

The Hon'ble Mr. Bayley moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to European Vagrancy, be taken into consideration. He said that in originally introducing this Bill, he had explained that it was not desired to initiate any great reform in the principle of the measure already in existence. It was in fact merely intended to amend certain details which had been found defective in practice and to consolidate the law, which was already spread over two enactments, into one. As he then said, the main changes which were proposed were three in number: they were, first, to amend a slight defect in the law as to making persons who imported European servants in charge of horses responsible for their maintenance after their landing; secondly, to enable the governing officers in charge of work-houses to maintain discipline; and, lastly, to enable persons who deserted from a work-house, while on absence under a ticket-of-leave, to be punished.

Since the Bill had been introduced, it had been circulated to the various Local Governments, and we had received from them, and more particularly from the Governments of Madras and Bombay, a good many suggestions which

the Select Committee had considered very carefully, and some of which had been adopted. The Committee had, for example, in section two amended the definition of "person of European extraction." Some difficulty was felt under the existing definition with regard to persons who were not of pure British blood, although of legitimate descent. Many of these were virtually in all respects as natives of this country, and the provisions of this Act were obviously inapplicable to them, although they came within the technical definition of "person of European extraction." At the suggestion, therefore, of the Secretary in the Legislative Department, a clause had been added to the definition which provides that it should not include persons commonly called Eurasians or East Indians. This, it was hoped, would be sufficient to meet the difficulty.

There was another rather curious point, that as the law now stands, although a Magistrate might enquire into the cases of vagrants brought before him by the Police, yet, if a vagrant came before the Magistrate himself, the Magistrate could do nothing until he had given the man in charge of the Police and so had the man secured and brought before himself. The Committee had amended section five to remedy this anomaly.

Under clause nine a certificate can be given to enable a vagrant to seek for work. It was found that sometimes these certificates were used by the persons to whom they were given as a pretext for going about begging. An alteration had, therefore, been made in the form of the certificate, by which, if a person was so found begging, his certificate would become void.

Then we came to the question of giving the Governors of work-houses sufficient power to maintain stringent discipline. In the clause upon this point which formed part of the original Bill, considerable alterations had been made. In the first place, at the suggestion of the Government of Madras, the Committee had introduced a modification in the form of the section which would enable powers to be given not directly to the Governors, but sometimes to the Governor under the supervision of the Committee of Management. In some of these work-houses, the Governors were officers of considerable standing who were in the receipt of high salaries: in other cases, the work-house was managed by a committee of officers with an officer ordinarily of the rank of a sergeant, and who was in receipt of a very small salary. It had, therefore, been thought necessary to enable the Local Governments to give the power intended to be given to the Governor, to the really governing body of the work-house.

In the next place, the Committee had considered very carefully the scale of punishment to be prescribed for breaches of discipline. It had ultimately

been thought better to confine the summary authority of the Governor of the work-house or the Committee of Management within comparatively small limits, and to provide that when any really serious offence against discipline was committed, the case should be brought before a Magistrate, before whom the offender would undergo formal trial and conviction. In these last cases, the punishment which might be awarded would not be carried out in the work-house, as would be done in cases of punishment inflicted under the summary orders of the Governor or the Committee, but in Jail. The provision made in the Bill for punishments under summary order were solitary confinement for seven days, solitary confinement for three days upon a diet reduced to such extent as the Local Government should prescribe, hard labour for seven days and reduction of diet as aforesaid for five days. He did not think that these punishments were excessive, but he hoped they would suffice to meet such petty breaches of discipline as the Governors of work-houses would ordinarily have to deal with.

There was before some difficulty as to the correct procedure to be followed in the case of a vagrant refusing to go before a Magistrate. It had now been provided that a vagrant so refusing might be arrested without a warrant, and taken before a Magistrate.

Then with regard to any proceeding under Part V of the Bill, we had made an alteration in respect to the declaration mentioned in clause five, by which it had been made *primâ facie* evidence that the person under detention was a vagrant. That was a technical point which had been left doubtful in the original Bill.

So far as regards the Bill as it now stood. There were one or two provisions which were pressed upon the Committee by the Local Governments, but which it had not been thought proper to adopt. To one of these MR. BAYLEY had alluded before, which was that the Governors of work-houses should have the power of flogging. This the Committee had not thought necessary, for as the class of persons with whom this Bill would deal were not actual criminals, although to a certain extent they were *quasi*-criminals, the Committee did not consider that they should be lightly subjected to punishment of this kind. Then, again, the Bombay Government specially urged upon the Committee to declare the power of the Government to prescribe that work might be performed in work-houses. Now, the Select Committee thought that the law as it stood was sufficient to meet that point. The place of confinement for vagrants was itself designated as a work-house, and he thought there should

be no doubt that it was a place for work. We had moreover given the Local Government power to prescribe rules for the management of work-houses, and to enforce obedience to those rules. So far, therefore, it seemed to us that under the law as it stood the Local Government could do all that was necessary. He had looked into the English law upon the subject, and found that under the English law the places of confinement for vagrants were designated work-houses, and there was no special provision for the imposition of work, although there was a provision in 55 Geo. iii, c. 137, s. 5, for the punishment of persons who refused to work. It might be said that although, as he believed, it was not absolutely necessary, yet it might be safe to give in express terms the power to impose work. But it appeared to the Select Committee that there was considerable objection to minute provisions of that kind, for it was almost impossible by any amount of foresight beforehand to provide for every similar minute necessity that might arise; and if the legislature took upon itself the province of determining beforehand and of providing beforehand for every possible contingency, it took away from what ought to be the natural discretion of the Courts to interpret the language of the law according to the most obvious common sense, and therefore the Committee had on that account deliberately abstained from saying in so many words what every man might naturally infer from the language employed to be the meaning and intention of the law.

Then there was another point which was pressed upon the attention of the Select Committee both by the Governments of Madras and Bombay. They wished to have the power to deport vagrants whether the vagrants wished it or not. At present they were deported only if they had no ostensible means of living and if they wished it. As the Bill was originally drawn by Sir Henry Maine, a clause to the effect suggested by the Madras and Bombay Governments formed part of it. But in Committee that clause was struck out, and it was struck out on account of a doubt as to the legal competence of the Council to make such a provision, that was to say, it was a question how far any law to that effect would have legal force outside of the territorial jurisdiction of the Government of India. Mr. Bayley thought it was possible that an Act of this Council might have sufficient force in this respect, but at any rate there was a very serious doubt upon the subject; it was therefore considered unsafe to insert such a provision in the law. Moreover, although the Local Governments whom he had mentioned had both unanimously asked for such a clause, it did not appear that any real necessity for it existed. He thought the effect of the present law was practically sufficient, and did in fact get rid of all or nearly all of the persons of whom it was desirable to be rid.

MR. BAYLEY had nothing more to say as to the details of the Bill. He had explained all that the Select Committee had done and all that they had omitted to do. In all other respects the law was precisely upon the same footing as when it was passed originally by the Council. The Bill no doubt was one of a very peculiar and somewhat stringent nature. It was introduced to meet an evil which had grown almost intolerable—one which had interfered materially with the police of the country, and which was not only a scandal, but had almost assumed the dimensions of a political embarrassment. It was not until, upon all these grounds, the question was absolutely forced upon the notice of Government that action was taken in the matter. The subject was very attentively considered when the Bill was originally introduced. The Government of India had since watched the operation of the law very carefully, and had required from all the Local Governments minute periodical returns of its operation, and had invited suggestions for its amendment. The amendments which the Select Committee had thought fit to make were all the results of those suggestions. But as to the main principles of the Bill, it remained intact. The alterations suggested were only in the details, and he thought he might fairly say that he hoped that this Bill, as the law had hitherto done, would work well. It had not only checked in a very great and material degree what at one time was a serious and growing evil, but it had also worked in a manner which had been very humane, and had operated very much to the benefit of the very unfortunate class of people of whom it treated.

His HONOUR THE LIEUTENANT-GOVERNOR said he had not had an opportunity of studying the details of this Bill, but he wished to add his testimony to this, that he thought the present law did require amendment. He was satisfied that the matter was in very good hands, and he trusted that the amendments supplied by this Bill would be such as were wanted. He might, however, say that he was not prepared to go to the length which the hon'ble member in charge of the Bill did, and say that the present law had worked well. He was sorry to say that the practical working of the law had been attended with very considerable difficulty; very considerable difficulty had been experienced in regard to the people who were not to be transported under the Bill, and considerable questions and considerable correspondence and difficulties had also arisen in regard to the people who were to be transported, and HIS HONOUR must express his regret that the hon'ble member in charge of the Bill had not seen his way to comply with the recommendations submitted by the Governments of Madras and Bombay, because in this Presidency also difficulty had been felt in regard to those who were

not willing to be transported. Here in Calcutta it had come to this, that we had filled our jails with vagrants: we had got them into jail, but we had not been able to get rid of them. In two or three cases we had been obliged to accept their promises of future good behaviour and had let them go free. Under these circumstances, HIS HONOUR should have been very glad if the hon'ble member had been able to accept the recommendations of the Madras and Bombay Governments and given a power of deportation in these cases to the Local Governments. It was the very greatest possible evil that men of the class which this Bill affected should enter and go about this country in the way they did, disgracing their country and disgracing the British name. HIS HONOUR thought it most desirable that there should be sufficient power given by the Bill over these men. However, he hoped that the amendments, so far as they went, would be found good, always excepting the one point with which the hon'ble member in charge of the Bill regretted he had not power to deal.

The Hon'ble MR. HOBHOUSE said that with reference to the point which had just been mentioned by His Honour the Lieutenant-Governor, he was *particeps criminis*, if there was any crime in the matter. He entertained considerable doubt as to the power of the Council to pass such a law as was asked for. The matter had been fully debated when the existing Act was passed, and Sir Henry Maine then intimated his opinion that the Council had no such power. MR. HOBHOUSE was disposed to agree with Sir Henry Maine. He did not mean to say that the question was not arguable, but he thought the balance inclined to the negative. Our power was to legislate for persons in British India. British India was a place within certain limits, and it might include the usual distance of three miles or a cannon-shot from the shore; but when you got beyond that, our laws had no binding force upon European British subjects, and it was for Europeans entirely, and European British subjects principally, that this law was intended. He thought we might find ourselves subject to considerable embarrassment if a question as to the validity of our law were raised by a person who had got beyond our territorial limits. He believed it would be wiser, as this legislature was not a sovereign legislature, but was confined to certain limits defined by its charter, to keep within those limits; and if we had a grave doubt in any matter, it would be better to abstain from passing a law with regard to which such doubt existed.

Looking also at the matter from a practical point of view, he did not believe that such a provision could work. It was quite true, as the Lieutenant-Governor had said, that there was considerable embarrassment in working the

law even as it stood. We had complaints from Liverpool, from the Mauritius, from Australia; in fact people tell us that they do not want our vagrants any more than we want them ourselves. Now, if you sent a man to a place to which he wished to go, he was likely to find some friends or some occupation for himself, and you had some guarantee for his good behaviour; but if you took a man away by force from where he was and set him down in some place where he did not wish to go, what likelihood was there that he would earn his bread honestly when there? There appeared to MR. HOBHOUSE to be no more sure way of driving people into the commission of crime than taking them by force from hence and putting them down on some shore where they did not want to go. That was a course which, he thought, must get us into trouble greater than the trouble we now had. These were the reasons why he objected to the course proposed by the Local Governments, and he believed they had received the assent of his colleagues on the Select Committee.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY said, that before moving the next motion, he wished to ask His Excellency the President's assent to move a verbal amendment in section three, clause *(a)* between the words "New Zealand" and "or the Cape Colony." Since the Bill had been drawn the Secretary had ascertained that the Colony of Natal had been separated from Cape Colony, and what MR. BAYLEY proposed was merely to insert the word "Natal" after "New Zealand." He did not think there was any objection to the amendment, and as it was a purely verbal one, perhaps it could be made without necessitating the postponement of the next motion.

The Motion was put and agreed to.

The Hon'ble MR. BAYLEY applied to His Excellency the President to suspend the Rules for the conduct of business to enable him to move that the Bill be passed.

His Excellency THE PRESIDENT observed that it was not necessary to suspend the Rules, unless any member had an objection to the motion, which the President should consider a valid objection.

The Hon'ble MR. BAYLEY then moved that the Bill as amended together with the amendment now adopted be passed.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. ELLIS presented the preliminary Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue. He said that though he had no motion to make, he begged permission to make a few remarks, and to explain the alterations that had been made in the Bill. He would premise that a great many petitions had been presented against the principle of the Bill. With two or three exceptions the whole of these petitions were in precisely the same words, and had evidently a common origin: they did not, therefore, carry so much weight as if they had been the spontaneous productions of the different districts and associations from which they came. Still he recognized among the signatures the names of many of the Native community for whose opinions he had much regard, and he should be sorry if their representations were set aside without due deliberation. In this case, full consideration had been given to all that had been urged, but the objections taken had in no way shaken the conclusions previously arrived at. The presentation of a report was not the proper occasion to go into all the arguments for and against a Bill. MR. ELLIS desired only to correct some misapprehension on one or two points. In the first place, it was a mistake to suppose that this was a quasi-private Bill. The Bill had been prepared on the motion of the Bombay Government; the principle had been discussed and approved by the Government of India, and he had been requested to take charge of the Bill and bring it before this Council. He might add that he had had the advantage of consulting the learned Chief Justice, Sir Richard Couch, and that this high judicial authority, whose opinion carried great weight both from his position and from his special local knowledge of the Bombay Presidency, had expressed his full concurrence in the principle of the Bill, and had approved of the form in which it was at present framed.

In the next place, there was misapprehension as to the scope of the Bill. To correct this, he could not do better than refer to a pamphlet published by Mr. Shámráo Vithal, a pleader of the High Court of Bombay, who had favoured him with a copy. The object of the pamphlet was to show how injuriously the measure before the Council would affect the right of the people to appeal to the Civil Courts for redress of wrongs inflicted by revenue officers, and to this end the compiler had collected together twenty-five decisions against Government passed by the Courts within the last ten years. Now he (MR. ELLIS) had analyzed this collection. Setting aside one case, of which the report was too meagre to enable him to judge, he found that out of the remaining twenty-four cases cited, there were only *two* of the class which would, by the passing of this Bill,

be excluded from the cognizance of the Courts, and of these one was the case of Wamnají Sadásiv so frequently referred to. Thus it would be obvious that it was by no means the design of the present Bill to give revenue officers complete immunity from being sued in the Civil Courts, and it would be also seen that until recently there had not been in the course of many years any cases of the class to be excluded. Both the two decisions already referred to were quite recent, and it was owing to a number of cases of the same class having lately arisen that the necessity for legislation became apparent.

He would now briefly mention the modifications made by the Select Committee, which were numerous, though the principle of the Bill had been maintained. The original preamble had been altered as being no longer appropriate in consequence of the change in framing the essential section of the Bill. This section (3) had now been based on the section of the Revenue Bill recently passed for the North-Western Provinces, providing for the exclusion of the Civil Courts from cognizance of certain matters. That section was passed without any expression of dissent either from the Council or from the public, and it had now, by the modifications made by the Select Committee, been adapted to the circumstances of the Bombay Presidency. A comparison, however, would show that the North-Western Provinces Act was the more stringent, especially in excluding the Courts from cognizance of disputes between private parties *inter se* regarding revenue or rent. These suits the Bombay Courts would continue to entertain. On the same principle, the Select Committee had omitted clause (*c*) of section three of the original draft—a clause framed in accordance with the law in what had been termed "the newer districts" of that Presidency. This omission left power to the Civil Courts to deal also with complaints of exaction by district and village officers.

On the other hand, some additions had been made to the Bill, as introduced. A section had been added to provide for an appeal to a Commissioner from the orders of an executive officer. Moreover, following the precedent of the Revenue Bill of the North-Western Provinces, specific reference had been made in the present Bill to village officers and servants, whose appointments and official remuneration the Courts would not be at liberty to discuss; and, indeed, so far as concerned both the official lands and the cash payments held by these persons, the jurisdiction of the Civil Courts was probably sufficiently barred under the existing law.

As these changes were of some importance, the Select Committee had recommended the republication of the amended Bill. He had no motion to make at the present stage.

HIGH COURTS CRIMINAL PROCEDURE AND PRESIDENCY POLICE MAGISTRATES BILLS.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction, and for other purposes. He pointed out that the notice intimated that he had also to present a supplementary report, but for certain reasons turning on matters of form he wished not to present that supplementary report, but to substitute a motion of which notice had been circulated though somewhat late in the day. Upon the report that he presented, he had no motion to make, and would have made no observations if it were not that it contained one important matter to which he thought the attention of the Council should be drawn, and because it contained the reason why he was about to make an irregular motion for presenting a new Bill. The matter to which he referred was an alteration in the constitution of juries. He was not going to argue the matter here. The Committee had recommended that the Bill be republished, and on its being republished, he had no doubt that there would be a great deal of criticism and of controversy. He would now only say that they had received very strong representations as to the extreme burden that service on juries laid upon residents in Calcutta. It was from Calcutta they had heard, because here we were in Calcutta and within reach of those who are interested in the question; but he supposed that the burden was not less in the other Presidency towns. There seemed no reason in the nature of things why the number of the jurors in the Presidency towns should differ from that in the Mofussil, and the Committee therefore considered that the easiest way of giving relief from the burden was to lessen the number of jurors. They had also received several express opinions to the effect that jurors might be conveniently reduced in number, and opinions also that the rule about unanimity might be dispensed with in the Presidency towns as it had been in the Mofussil. The Committee then proposed to make the alterations set forth in paragraph 11 of the report. The proposal was this—

"A verdict of guilty or not guilty, as the case may be, shall be delivered either when the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them.

"When the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

"If the Judge disagrees with the majority, he shall then discharge the jury.

"If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury."

The Council would see that instead of the present law of unanimity, the Committee proposed a rule that six out of the nine, and the Judge should concur to secure a verdict. Otherwise the jury should be discharged.

The other part of the report which MR. HOBHOUSE would mention was that which recommended that the Bill should be cut into two. When he introduced the Bill into the Council, he explained the two parts. It was thought at first that as the whole related to criminal procedure and to the Presidency towns, it would be convenient to join the two into one Bill. It was found, however, that different discussions arose, and that different persons were interested in the two different parts; and, in all probability, one part might be advanced with considerably greater speed than the other part. We had therefore thought it better to cut the Bill into two, and we proposed to treat the first part of the Bill, which was also the part indicated by the title, as representing the original Bill.

As to the other half, in point of form it should be introduced as a new Bill, and he should ask His Excellency the President to suspend the rules of business and to allow him to introduce it that day as a new Bill. The Council would see that this was a pure matter of form, and that in point of substance everything had been done that was requisite. The Committee had drawn a supplementary report to the original report on the High Courts' Criminal Procedure Bill. That supplementary report showed how they had dealt with the second part of that Bill—the part which related to the Police Magistrates in the Presidency towns. He would beg the Council to take that supplementary report as being in effect the Statement of Objects and Reasons to the Bill which he should now ask leave to introduce, and which he should subsequently introduce.

He had explained to the Council, when he introduced the Bill, that with regard to the practice of the Courts of the Police Magistrates, the subject was one of which he could not pretend to have any personal cognizance. Probably not many of the Council could have such cognizance. He did not suppose that any body could say of any part of the Code of Criminal Procedure that it was or was not expedient to apply it to the procedure of Police Magistrates in the Presidency towns, except persons who had had experience as Police Magistrates of the Presidency towns. For that reason the Bill as introduced had followed closely the suggestions of the only gentlemen who had sent in any detailed suggestions. These were the suggestions of the Police Magistrates of the town of Madras who had bestowed great pains in going through the Procedure Code and pointing out the parts which seemed to them applicable to the business of Police Magistrates. The suggestions were sent up with the

approval of the Government of Madras, and formed the basis of the second part of the Bill. Since the introduction of the Bill, further suggestions had been made by the Madras authorities, who had again been carefully considering the subject. Those suggestions were principally in the direction of excluding portions of the Criminal Procedure Code from application to Police Magistrates. The Committee did not feel themselves quite competent to deal with the matter if unassisted, and MR. HOBHOUSE would explain exactly what they had done. They had put themselves in communication with Mr. Dickens, the Police Magistrate, and that gentleman had, with great kindness and pains, been going through the whole matter. He had given up some of his valuable time by attending the Committee, who had examined the suggestions of the Madras Magistrates with him. Therefore, the Committee had a valuable criticism upon those suggestions, the bulk of which had been adopted. That was the substance of the Bill which MR. HOBHOUSE now asked leave to introduce. The whole of the details were shown in the report, but he did not know that there was any detail so important that he should specially point it out to the Council. He now moved for leave to introduce the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT observed that it appeared to him that the rules of the Council had been substantially complied with, with regard to the Bill, and therefore it was nothing more than a matter of form to suspend the rules on this occasion.

The Hon'ble MR. HOBHOUSE then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in two months.

His Honour THE LIEUTENANT-GOVERNOR said he was inclined to think that the Committee had done very wisely in cutting what was one Bill into two Bills. He thought that it had been rightly explained that one part of the Bill referred to matters and places beyond the Presidency towns, and that the other portion was confined to the Presidency towns. The second part of the Bill dealt with a very important question, which was not quite sufficiently treated in the original form of the Bill. Therefore, he thought the Committee had done wisely in dividing the Bill into two parts. He could not, however, say that he was prepared to follow the hon'ble and learned member in charge of the Bill in all the observations he had made.

With regard to the first part of what was originally one Bill, he had only that day seen the report of the Select Committee; but he was inclined to think that the amendments proposed were good amendments. With regard to the question of the number of persons of which a jury should be composed, he quite agreed with the hon'ble member in charge of the Bill that it was desirable that the number should be reduced. His Honour had said that he had only seen the report of the Committee that morning, and he spoke from memory and without book when he said that his impression was that in the Courts of the interior the number of a jury was not fixed at nine, but it might be fixed by order of the Local Government at nine, seven or five. His own opinion was that nine was an unnecessarily large number, and might be reduced, and he believed the number had been reduced in most of the districts in Bengal. Therefore, he ventured to suggest that if a fixed number should be taken to form a jury, seven would, probably, be a more convenient number than nine.

Then with regard to the question of unanimity, His Honour had a good deal to do with the working of juries in England, and had carefully observed the working of the English system. His practical belief had been from an English point of view, that in the great majority of cases in which there was an unreasonable difference of opinion, only one juror differed from the others, and taking the question from an English point of view, his opinion inclined towards the view that if the whole of the jury, except one, was unanimous, the verdict should be accepted. That was to say, that in the case of there being only one dissentient in the jury, that one dissentient should be non-effective. He was inclined, however, to believe that the view taken by the Committee that two-thirds of the jury, with the concurrence of the Judge, should be entitled to give a verdict, was a very reasonable and good proposition, and well worthy of the consideration of the Council.

His Honour was sorry to see that the first part of the Bill was postponed indefinitely for future consideration, and that the second part of the Bill was still in a very inchoate state. This Bill had been a long time before the Council. We who were interested in the Bill thought we had done something towards its maturity when we obtained the consent two years ago of the hon'ble member who lately occupied the seat of his hon'ble friend opposite, to stand sponsor to the Bill. But he regretted to see that the Bill had been somewhat neglected, and that it had dragged on a somewhat ill-nurtured and uncared for existence. Now he trusted that the hon'ble member in charge was inclined to adopt the Bill as his own, and that it would now be properly nourished and brought up.

BENGAL SECRETARIAT LIBRARY

With regard to the second part of the Bill, to which the motion before the Council was specially designed, His Honour might say that he did not think that the Bill had yet attained anything like the shape which it deserved to attain. Certain parts of the Criminal Procedure Code were declared applicable to the Police Courts of the Presidency towns, but he did not find that any provision was made for those parts of the Police procedure which did not come within the scope of the parts of the Criminal Procedure Code which were proposed to be extended. Provision was wanting in the Bill for the rest of the procedure of Police Courts. He thought that the clauses of the Bill did not touch what he had persistently pressed upon the Government of India as his opinion, namely, that there was that floating undefined English law which rendered the procedure of these Courts altogether uncertain, altogether obscure, and altogether beyond the powers of the public to comprehend.

The English common law in the country of its birth to which it was adopted by long practice, was no doubt in some respects a good law. But when you came to extend it to another country under a different state of things, it was a most obscure airything. On a former occasion he showed that the English law which prevailed here was not the modern English law, and not either the ancient English law, but something which was introduced bit by bit in a manner which no mortal could understand between the years 1750 and 1800; and we were now still in that stage in which no mortal could say what was the English law which now prevailed in Calcutta. He should be sorry to see now any Bill passed which would leave the law in that extremely indefinite state. He was willing to concede that so far as the first part of the Bill went, it was a fair measure of reform. But he hoped that a great measure of this kind after several years of growth would not be passed without being made worthy of the time and labour which had been bestowed and which would be bestowed upon it. He trusted that the hon'ble member having taken charge of this neglected step-child would make it still more worthy of his name and reputation, and would settle by it the whole criminal procedure of the Presidency towns; that we should get rid of some English notions which were to be found existing amongst us in such offices as that of Sheriffs and the like, amalgamate the whole duties of Coroners with those of Magistrates, and give a succinct procedure and a written and a sensible guide to the criminal procedure of the Presidency towns.

The Hon'ble Mr. Hobhouse said in regard to the delay in introducing the Bill, he thought the Lieutenant-Governor must have forgotten that up to a short time before its introduction we were in correspondence with the Local Governments about it. He believed he was correct in saying that that

correspondence was commenced at the request of the Bengal Government. It was true that the Lieutenant-Governor had urged the Legislative Department and MR. HOBHOUSE personally to go on with the Bill, but the answer was that we must wait for the opinions that had been asked. It was a matter of difficulty requiring special and local knowledge, and it would not have been wise to go on with the Bill before they were in possession of the materials which were necessary to a full and proper treatment of the matter. He was not conscious of any neglect in his Department. When he introduced the Bill, he had been at the pains to explain the lapse of time between obtaining leave to introduce the Bill and its actual introduction. He could only coincide with the Lieutenant-Governor's hopes in this matter and wish they might be realized. If the Bill was a step-child, it should, at all events, receive as much attention as though it were a natural child.

With respect to the observation made by the Lieutenant-Governor as to the incompleteness of the second Bill, MR. HOBHOUSE was not aware that there was any part of the criminal procedure of Police Magistrates in the Presidency towns which would be left unprovided for by the present measure. If there was, we must call the attention of the Police Magistrates to it, and ask them what it was which went on in their Courts with respect to which they would not find a guide in the present Bill. As at present advised, he was not aware of any necessary provisions which were not included in the Bill: when he was told what they were he would promise to give them his best attention.

The Motion was put and agreed to.

BURMA COURTS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill for the further amendment of the Burma Courts Act, 1872. He said that the Burma Courts Act was before the Council during the course of the year 1872 and had already been amended by Act I of 1873. It was an experiment setting up new machinery; and from time to time, as the machinery became clogged, it would require some fresh legislation to make it work smoothly. As various wants were discovered, they would be considered, and the Act amended. The present occasion for amendment was this. The Act established a great many Courts. The lowest was the Court of the Extra-Assistant Commissioner of the third class who had jurisdiction up to a certain value. The next was the Court of the Extra-Assistant Commissioner of a higher class and the Assistant Commissioner with power to try a higher class of suits. The third was the Court of the Deputy Commissioner having jurisdiction in all suits of all values, and receiving appeals from the first and second grades of Courts. As to that a difficulty had arisen,

The Act followed the principle of the other Acts passed for establishing Courts of judicature in other parts of the country. It entrusted the discharge of the higher judicial Courts to the officers in whom was reposed the duty of discharging the higher executive duties. In the meantime, in dividing the territories of Burma amongst the executive officers, it was found not convenient to have so high an officer as the Deputy Commissioner, the chief executive officer in all districts. It was also found inconvenient in some cases to have appeals from the two first mentioned grades of Courts lying to the Deputy Commissioner, who might not even be in the district in which those Courts were sitting. Therefore, the Chief Commissioner desired to be empowered to confer upon the officer (whatever might be his title) in chief executive charge of any District the appellate jurisdiction now exerciseable only by the Deputy Commissioner. That was the main reason for the present Bill.

At the same time opportunity would be taken to relieve the Recorder of Rangoon from complying with certain requirements under the Criminal Procedure Act, which at present compelled him to observe certain minute points of practice and to perform certain duties from which the High Courts were relieved. The opportunity would also be taken to revive certain Acts which the Burma Courts Act had repealed, and which it was now found were wanted.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns,—The Hon'ble Messrs. Ellis, Bayley and Dalyell and the Mover.

The Council then adjourned to Tuesday, the 21st April 1874.

CALCUTTA,
The 7th April 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt Govt. Printing.—No. 6 L. D.—10-4-74.—240.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 21st April 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K.C.B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble J. F. D. Inglis, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble R. A. Dalyell.
The Hon'ble B. D. Colvin.

BURMA COURTS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for the further amendment of the Burma Courts Act, 1872, and moved that it be referred to a Select Committee with instructions to report in two months. He said that the Council would observe that the Bill in their hands was a very simple one, and was intended for the purpose of compassing the three objects which he had mentioned before. The object of section one was to give the Chief Commissioner the power of creating a Court of Appeal within any district which was not superintended by a Deputy Commissioner; section two was for the purpose of relieving the Recorder of Rangoon from certain forms and requirements of the Code of Criminal Procedure which were not suitable to his Court; and section three was for the purpose of reviving certain Acts which were found wanted in British Burma.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure. He said this was a matter

that consisted almost entirely of details—and details mostly or altogether of a small character—the explanation of which he should not attempt, because it would take up a great deal of time and would produce no good. But he wished, with the permission of the Council and before they were asked to proceed to the consideration of the Report, to mention the principles upon which the Select Committee had proceeded. First, he would say, that they had received an enormous number of suggestions for the amendment of the Code. He did not exaggerate when he said that they had been poured upon them by hundreds. That this should have been the case was easily intelligible. The Code was a great work, having an enormous number of ramifications, and had already been the subject of three or four text-books; and it was part of the daily life of an immense number of officials who were testing it in every possible way. The question was in what way should the Committee deal with these suggestions.

First they thought it their duty not to embark upon any examination of the broad principles of the Code. There was one influential quarter from which they had received an invitation to proceed to such an examination. They were invited by the British Indian Association to reconsider those parts of the Code which dealt with appeals from acquittals, enhancement of sentences, summary trials and so forth. Well, the Committee considered that it would be wrong for them upon such a Bill as this to treat such subjects as thrown open. It seemed to him that the Select Committee, or indeed the Council itself, would be doing a wrong thing if, on mere abstract arguments without any proof at all of the ill-working of the Code, they were to reagitate that which had been so recently and deliberately settled. In the memorial of the British Indian Association there was no instance adduced of the harsh or injurious working of the Code. All that had been given were abstract arguments which he wished to treat with all respect and which would properly be adduced if the principles of the Code were now being discussed. But these arguments must have been present to the minds of the Council when they determined to pass the Code into law. They certainly were present to the mind of the Secretary of State when he determined that the Code ought to be law, because a memorial couched in the same terms or something very like them was forwarded to the Secretary of State before he gave his assent to the Code. Before the Council proceeded in the direction indicated, there ought to be evidence of practical injustice or hardship on such a scale as would justify legislation. The officials as a body seemed quite satisfied with the working of the impugned parts of the Code and nobody had adduced any evidence against them. It was indeed open to any member of Council to move amendments which should have the effect of raising any of these important questions, and

to ask the Council to discuss them. It was another question whether they would succeed. For his own part, he thought that, affairs standing as they did, the Council ought not to discuss them. At all events the Select Committee were clear that they ought not, and they had not done so.

A great many of the other suggestions received were found when examined to resolve themselves into mere matters of drafting. Now amending the Code was one thing; re-drawing it was a totally different thing. In the course of years the Code would no doubt be re-drawn. Then it would be for those who had to perform that work, to consider whether the suggestions made were improvements. We should be only confusing people if we placed side by side with the more substantial amendments a number of alterations adopted for the purpose of making the language clearer without altering the subject-matter.

Again, a number of other suggestions received were in the nature of speculative doubts on the construction of the Code. They were things which occurred to all reasoning men in the course of their working, but the Committee had looked to see what was the substantiality of the doubts, and what the probability that if, and when, those doubts were raised the Courts would not decide according to the intention of the framers of the Code. And they had not proposed any alteration except where they thought that there was reasonable probability of an embarrassing decision.

The result was that the Committee had selected, from the suggestions received, some thirty or forty in addition to those which were in the Bill as introduced into the Council. And he thought it would be found that every one of these alterations was either founded on some decision by a Court of Justice—by a High Court—or on some material discussion in a High Court, or on the suggestion of some gentleman whose official position gave great weight to what he said and who showed from his own experience that some difficulty or some doubt had arisen which would become more and more embarrassing unless the opportunity of amendment was taken. These were the principles which had guided the Committee in their selection of the very numerous suggestions made to them.

The Report went into the details of the amendments. Hon'ble Members would study it for themselves if they cared to know exactly what had been done. But what he had stated might be useful as a guide to the principles upon which the Select Committee had proceeded.

BURMA FISHERIES BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to regulate Fisheries in British Burma.

Leave was granted.

PORT-DUES ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to consolidate and amend the law relating to Ports and Port-dues, and moved that it be referred to a Select Committee with instructions to report in three months. He mentioned when he asked leave to introduce this Bill that there were two objects which the Government had in view. One was to enable the levy of a reasonable sum for what we called Hospital port-dues; and this sum was designed to answer the expenses incurred by the authorities in ports for tending sick seamen. The other was to extend certain provisions of the Ports Act to the navigable channels leading to the ports, which were now extended under the general Act only to the ports themselves. There was a third object which he inadvertently forgot to mention at the time, namely, to extend to other ports in India certain provisions now in force in the ports of Calcutta, Madras and Bombay for the arrest of deserters from foreign vessels. Some practical difficulty had arisen in this matter in the ports of British Burma, and some complaints had been made, particularly by the Italian Government, that our law was not sufficient to enable the commanders of foreign vessels to keep their seamen to their duty. In the three ports he had mentioned sufficient provision existed for such cases, and we now desired to extend the same provisions to other ports.

He had also mentioned that the opportunity would be taken of seeing whether the law relating to ports and port-dues could be usefully consolidated. The law was found to be contained in no less than twenty-two enactments. That circumstance spoke for itself. He therefore now presented what appeared to be a long Bill, but what was in fact mainly a repetition of that which was already in the Statute-book. If the Council would look at the first schedule of the Bill they would see a tabular statement of the charges on ships. That statement was the result of the examination of a number of local Acts. Different rates were chargeable on vessels at different places, and again at different periods of time. He thought it would be a much simpler and clearer method to reduce the several local Acts into one Act, and to set forth by means of a tabular statement those rules which now took effect under different Acts. Nearly the whole of the Bill including that

schedule consisted, apart from the new objects he mentioned, of a re-arrangement of the present law and some shortening and simplification of its language.

He did not mean to say that the process of consolidation led to no alteration of the law. It constantly did so when a number of local enactments were passed into a general one. But the alteration was only in the way of giving greater local extent to provisions already in force in some places. At present the law on the subject stood as it had been passed in fragments for different parts of the country; and different arrangements had been made at the suggestion of local authorities. No doubt they had been made to suit the accidental circumstances of the ports of those particular places. But on examination many of them were found applicable to all ports. And therefore under a consolidation Act it naturally and easily came about that a provision now extending only to Calcutta, for instance, was extended to other Indian ports.

He would give one or two instances to illustrate what he meant. Look at section seventeen of the Bill. It provided that for the purpose of preventing or extinguishing fire in any port to which this Act extended, the Conservator might require the Master of any ship of more than five hundred tons burden to place at his disposal such number as he required not exceeding three-fourths of the crew. That was a provision in use in the port of Calcutta. It was obvious that the same necessity must exist, and the same provision must be equally useful, in other ports. Therefore, it was a provision which he thought the Council would agree should be extended to the ports all over India. Again, section thirty-seven we had taken also from one of the Calcutta Acts. It was a section which enabled the Local Government to make stringent rules with regard to inflammable oils. There might be ports into which no inflammable oils entered, and to them of course the provision would be useless; but in all others it would be useful. Again, in section forty-five, there is a provision which was passed last year for the ports of British Burma. There, they were gradually bringing ports within the operation of the Ports Act; but the Government had no power to declare the amount of dues to be taken from vessels entering such ports. Therefore, besides the notification bringing a port within the Act, it was necessary to have an Act of Council on every occasion. The same processes were requisite in other parts of India, only the inconvenience was not so conspicuous, because the process of creating ports under the Ports Act was not going on so fast as in British Burma. Still such a thing would take place from time

to time, We therefore proposed to extend the same principle to the whole of India, and to provide that, when a port was brought within the operation of the Act, the maximum amount of port-dues should be declared by the same notification which extended the Act to that port. Again, in section forty-seven there was a power, which the Local Governments of Madras and Bombay possessed, that for the purpose of keeping the accounts of port-dues, a number of ports might be treated as constituting a single port. That seemed to be an exceedingly useful provision, tending to simplify accounts, and probably to render the administration of the ports more vigorous. There appeared to be no reason why that provision should not be extended to other parts of the country. Again, section fifty-six was a section found in several local Acts, namely, that no port-due should be chargeable if a vessel left a port and was compelled by stress of weather to re-enter it. He thought the examples that he had cited were sufficient to show the Council how it came about that in the process of consolidation there was an alteration of the law almost necessarily effected.

He would now explain to the Council what the Bill consisted of. Schedule I he had already explained. There were eight parts or chapters in the Bill, and if the members would cast their eyes down the margins of the sections they would see that very nearly the whole of the sections were repetitions of the existing law. In the first five chapters he thought there was nothing substantially new, except that the Bill compassed one of the objects he mentioned of extending the Ports Act to the navigable channels leading to ports, and that it extracted from the local Acts sections of universal applicability and made them into general provisions applicable to all ports. In Chapter VI he had explained the reason for the introduction of section forty-five. But he did not mention a matter of detail in respect to this section, that there should be a maximum amount fixed in the Act itself within which the Local Government should fix the maximum port-dues. It was so done in the Burma Port-dues Act that he had mentioned. We provided that the Local Government should fix the maximum dues, but that maximum should be within the limits of a statutory maximum. There, it was provided that the statutory maximum should be four annas for every ton of burden of vessels of the burden of ten tons and upwards. Whether that provision would be applicable to the whole of India MR. HOBHOUSE could not tell. Probably it would not; probably we should have to fix a statutory maximum by reference to the actual maximum prevailing in the different localities. At present the clause did not fix any maximum. It must be for the Select Committee to consider how that could best be done.

The same part of the Bill provided for another object which he had mentioned, the important object of hospital port-dues. That was provided for by sections sixty, sixty-one, and sixty-two. Section sixty proposed to empower the Local Government to order that there should be paid in respect of every ship lying in any port, within a reasonable distance of which there might be a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thought fit. Then the next section provided that such port-dues should be applied in support of any hospital or dispensary or otherwise for giving medical aid to seamen in the port. And section sixty-two enacted that port-clearances might be refused until all hospital port-dues incurred had been paid. That had been the law in Calcutta since 1867. It had been found to work well here, and would probably work well elsewhere.

Chapter VII consisted only of penalties, and in it we had exactly followed the existing tariff of penalties. And Chapter VIII consisted of one or two miscellaneous provisions, amongst which was the third object which he had mentioned, namely, to give greater facilities for dealing with deserters from foreign ships. This clause had been taken, he thought *verbatim*, from the existing Bengal Act, and it was already law in the ports of Calcutta, Madras and Bombay.

He did not think it was necessary to call the attention of the Council to any more of the details of the Bill.

The Hon'ble MR. COLVIN said he was quite ready to support the primary purposes of this Bill as set forth in the Statement of Objects and Reasons, and as had been explained by the hon'ble and learned member in charge of the Bill; and he thought the consolidation of the numerous existing Acts relating to ports would be accepted on all hands as an obvious improvement. But as the Bill was somewhat lengthy and had only just been placed in his hands, he was not prepared to offer an opinion as to the detailed provisions to which the hon'ble member referred. As he proposed to refer the Bill to a Select Committee with instructions to report in three months, MR. COLVIN would have an opportunity of doing so at a later stage, and he had no doubt that others interested in the subject would make their views known in the usual manner. He begged to support the motion.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the local Gazettes of Calcutta, Madras, Bombay and British Burma.

The Motion was put and agreed to.

SALT LAW AMENDMENT BILL.

The Hon'ble MR. ELLIS moved for leave to introduce a Bill to amend the law relating to Salt, and said that, if this permission were accorded him, he would then ask His Excellency the President to suspend the Rules for the Conduct of Business, and move that the Bill be taken into consideration. Perhaps it would be the simplest plan merely at present to ask for leave to introduce, and if he obtained such leave, he would enter into an explanation of the object and detailed provisions of the Bill.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS applied to His Excellency, the President, to suspend the Rules for the Conduct of Business.

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. ELLIS introduced the Bill and moved that it be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS would premise that, although entitled generally "a Bill to amend the law relating to Salt," it did not affect the general Salt-duties of India. It was in fact fiscally a very small measure, but it was a measure of great administrative importance. As the Members of the Council were aware, there ran through a part of India an Inland Customs-line, some 2,400 miles in length, and composed of an impassable hedge or other barrier, with openings at intervals of a considerable distance, through which alone any traffic could pass. These openings were guarded by Customs Preventive Officers, whose duty it was to take care that no salt or other dutiable article should cross the barrier, unprotected by a proper and sufficient pass. He would say that the Department had been supervised with every care for the protection of the people, and that the organization which had been created by Mr. Hume, and had since been efficiently maintained by Mr. Batten, was as good as could be devised, and the supervision exercised was as vigilant as in such cases it could be. But it was not to be denied that, with all the control and supervision which we could bring to bear, there must in some cases be oppression, and it was obvious that the hindrance to traffic and trade must be intolerable. Under these circumstances, it was of course the object of the Government to get rid of any portion of the customs-line that could possibly be dispensed with, and the present Bill proposed to effect this object as far as we were able now to carry it out.

Besides that line of nearly 2,400 miles, there was also another line of 136 miles of preventive police posts on the frontier of Bengal, where it abutted on the district of Ganjam and the south-east corner of the Central Provinces. The late Lieutenant-Governor represented last year, with great force, the excessive hindrance to trade that this line of posts was, and he said that the hindrance amounted almost to a total stoppage of the interchange of commodities between the Central Provinces and Orissa. In Madras also, the authorities complained that the traders of Ganjam were checked and hindered in their dealings with the Central Provinces, owing to the exit for their salt through Orissa being barred on account of the risk to the Bengal revenue. Then, again, the Government of India had had reason to complain of the Ganjam traders making use of a gap between the Inland line and the Police posts of Bengal, and in order to stop the smuggling into the Central Provinces, it would have been necessary, unless some measure of this kind had been devised, not only to maintain the present posts, but actually to increase their strength. The Government of India, therefore, had for some time been desirous of abolishing so much of the great customs-line as separated one Province of British India from another, and also the whole of the minor frontier line to which he had just referred. But until now it had not seen its way to do so. The Bill did not contemplate the abolition of the whole line. Over two-thirds of the line separated British territory and Native States, and could not now be dealt with. That portion of the line, therefore, which stretched from the Northern Indus down to Burhánpur in the Central Provinces must remain for the present untouched. But he hoped by this Bill to get rid of a line of nearly 800 miles, stretching round the western side of the Central Provinces and Birár, and the southern portion of the Central Provinces, to the boundary between Orissa and the Madras Presidency. In that object he thought he might rely on having the concurrence of every member of the Council.

Hon'ble members would remember that the reason for maintaining this great customs-line was the differential rates of duty. To go into the question of those differences would involve a review of the whole taxation of India. Such a review was in no way necessary on this occasion. We assumed these differences of duty as a fact, and our object in this Bill was, not to equalize the salt-duties, but to abolish the customs-line. The problem, therefore, was how to abolish the line with the least risk to the general revenues, and the least disturbance of the existing channels of trade. He would now explain how it was proposed to effect the object, and, in doing so, he would observe that the measures to be taken were two-fold. In the first place, there was in Western India a duty of one rupee and thirteen

annas on salt in the Presidency of Bombay outside the line, and in the Central Provinces and in Birár inside the line a duty of three rupees. We had to see how we could take away the line between the two without preventing a rush of the lower taxed salt, so as to drive out of consumption the higher taxed salt, which now paid a duty of three rupees. The matter, here, was comparatively easy, as we were able to avail ourselves of the railway, and the mode proposed was a graduated scale in the shape of a mileage rate on railway-borne salt, so as to shade off the difference between one rupee and thirteen annas in Bombay and three rupees at Jabalpur. We found we could do this by imposing, in addition to the tax of one rupee and thirteen annas in Bombay, a tax of seven-tenths of a pie per maund per mile on the 320 miles of railway between the frontier station of Ráver and Jabalpur, so that an additional duty of one rupee two annas and eight pies, added to the duty of one rupee and thirteen annas per maund in the Bombay Presidency, would, within four pies, make up the three rupees duty at Jabalpur, which remained untouched. So also on the line of railway towards Nágpur. We proposed there also to adopt the same course and impose a mileage rate, which in this case was only six-tenths of a pie per maund per mile; as by that extra levy we were enabled to attain, at Nágpur, 225 miles from the frontier station of Nárgáon, three pies in excess of a duty of two rupees and eight annas. The duty, therefore, would here be reduced from three rupees to two rupees and eight annas. Otherwise we could not expect the present flow of salt from the west to continue; it would be thrown out by salt coming in from the Madras side at lower rates of duty, and, besides losing revenue, we should have a disturbance of the ordinary channels of trade, and the railway would carry less salt. It was therefore resolved that it would be better to lower the duty in Nágpur and the surrounding parts, rather than disturb the existing sources of supply by attempting to maintain, at Nágpur, a duty so high as three rupees per maund. In making the arrangements necessary to carry out this scheme, we had been assisted by the co-operation of the Government of Bombay, and we had received most cordial help from the Agent of the Great Indian Peninsula Railway Company. It was obvious that it was not necessary to enlist the direct co-operation of the Railway Company's officers, because it was practicable to levy the tax by officers of the Government at the various stations; but the advantages to the Railway Company and the public, and indeed to the Government, were so great by combining in one levy the mileage-rate of customs-duty, and the mileage-rate for railway-transit—having, in fact, one officer instead of two to do the work—that we thought it better to ask the Railway officers to do it, so that the public might be free from all interference from Customs officers except such as would be necessary in the way of check and control. There would

thus be no direct interference of the Customs officers between the place of manufacture on the Western Coast and the Central Provinces and Birár. The loss of revenue calculated from this reduction of duty was only Rs. 1,32,000, supposing that the consumption remained at its present figure. But he had every hope that by lowering the duty there would be some, if not a much larger consumption of salt, and, therefore, the loss would not be so great as had been suggested.

The other portion of the question was somewhat more difficult. On the Eastern Coast there was no railway to help. There was on the Madras side a duty, as in Bombay, of one rupee and thirteen annas, but on the other side of the Frontier was a duty of three rupees and four annas, the rate current in the Lower Provinces of Bengal; nor was the distance so great that we could confidently fix a graduated scale of duty without great risk of the lower paid salt of Madras driving out the higher taxed salt imported into Calcutta. We had therefore, in this instance, to do more than lower the rate in one province; we had to raise the rate in another. It was with the greatest reluctance that we asked the Madras Government to agree to increase the rate of duty on salt in one of their districts; for we felt that the advantage to be derived from this measure would be derived chiefly by other provinces than that of Madras. But still, as it was found absolutely necessary to raise the duty in some portions of the northern part of Ganjam, we applied to the Madras Government to know whether they objected to the imposition of a small increase on the present rate of duty. The requisition was restricted to the smallest amount practicable; and MR. ELLIS might state that, even now, experienced officers well versed in all the circumstances of the Salt-duty in Lower Bengal, said that the amount of extra duty about to be imposed in the Ganjam district of the Madras Presidency was too small, and that there was risk of Ganjam salt superseding the salt of Orissa and of Calcutta, and thus proving detrimental to the revenue. But the Government of India was prepared, out of consideration for the views of the Madras Government, to accept some amount of risk; and in fixing the duty at the low rate proposed there was some risk. If it should hereafter be found that this anticipation was realized, it would be necessary to take other measures. But for the present, we were prepared to take our chance of the risk pointed out.

The mode in which it was proposed to do away with the frontier-line between Madras and Orissa was this. The duty in Orissa would be lowered by a scale descending from three rupees and two annas on the northern frontier of Orissa, where it would meet the rate of three rupees and four annas

prevalent generally in the Lower Provinces of Bengal, until at the boundary of Ganjam, the lowest rate leviable in Orissa would be two rupees and four annas. In Ganjam, we came to a somewhat different system. The Madras system was not to charge a duty separately as in Bengal and Bombay, but to charge what was called the selling price—the price at which salt was sold to the public. The supposition upon which that price was fixed was, that the duty was one rupee and thirteen annas, the same as in the Bombay Presidency; but the selling price, including the cost of manufacture, was two rupees. Here we had to see what was the lowest possible amount by which the Madras price might be raised to prevent Ganjam salt at lower rates displacing the higher taxed salt of Orissa and Bengal generally. We fixed as a minimum two rupees and four annas as the selling price, the selling price being now two rupees. Therefore, the most which would be imposed in any place in the Madras Presidency was an extra charge of four annas per maund, and that only at one station, the station nearest to the Orissa frontier. In the next station, Ichapur, we graduated the duty by fixing the selling price at two rupees and three annas. Therefore the whole measure of alteration of the Madras rates of duty was an extra imposition of four annas at one station, and of three annas at another station in the northern portion of the Ganjam district. Beyond that, the Madras duties remained untouched, and there was no increase to the general rate in the Madras Presidency.

Mr. Ellis was quite aware that logically a graduated rate of duty could not be supported. Of course there was no logical reason why salt as it went farther should pay a higher rate of duty. But practically that was the only mode in which we could get rid of what had been described as an intolerable nuisance, the customs-line, and he thought that the proposed mode was quite defensible where the object to be gained was so important, and could not be otherwise attained. He would add, as showing that the object of this imposition of extra duty was not to increase the revenue, that the Government of India had determined to allot the annual sum of Rs. 20,000 for expenditure in the Ganjam district, that sum being, so far as we could estimate, the amount of additional taxation on the salt manufactured there for home consumption. The Madras Government was naturally and properly very reluctant to see any additional taxation imposed on any portion of the people entrusted to their care. But feeling that this great administrative reform could not be carried out without incurring the risk of loss of revenue greater than the Government of India could reasonably incur, they gave their assent to the proposal to impose this small additional duty.

The loss which would be incurred on this side by the abolition of the customs-line and the consequent reduction of duty in Orissa had been so variously estimated that he was almost afraid to give the figures. Generally it had been put at about five or six lákhs of rupees, against which we might set off a saving in the customs establishment, and no inconsiderable amount due to the future increase in licit consumption of salt in the Central Provinces. He believed also that the Ganjam trade would receive a considerable impetus in consequence of its deliverance from the trammels of the customs-lines, and that the Orissa traders would be enabled to open out communications with the Central Provinces, which had been almost wholly stopped, and that thus the general traffic and the revenue from salt would alike derive benefit.

It remained only to explain why he had ventured to ask His Excellency the President to suspend the Rules of the Council. The reason was not so much that the Government would be deprived, by a short delay, of a small additional revenue in Ganjam; but because, as soon as it was known to the trade that the duty would be raised, it was natural that traders would cease to send salt from Bombay to the Central Provinces, and there might be an undesirable dearth of salt in those districts. For these reasons he asked permission to suspend the Rules, and would move that the Bill be at once taken into consideration.

He believed he had explained sufficiently the provisions of the Bill, but he would briefly refer to the several sections, and he would point out how they would provide for the measures he had explained. The first section affected the district of Ganjam in the Madras Presidency. It provided for the future selling-price being fixed at a sum not exceeding two rupees and four annas per maund. He had before stated that the selling-price was now two rupees, and we could not impose a higher rate without an alteration of the law. The section gave power to the Governor General in Council to fix a rate not exceeding two rupees and four annas. The price would not be two rupees and four annas uniformly; it would be at that price in only one station, while in another station it was to be two rupees and three annas, and in no other station would it be altered at all.

The second section had reference to the Bengal Presidency. There the salt-duty leviable as an excise in Orissa and other parts of Lower Bengal was necessarily by law the same rate as was levied as a customs-duty. We proposed in this part of the Presidency to lower the duty, and we did not propose to lower the rate of customs-duty; it was necessary therefore to give the Governor General in Council power to fix the duty in the province of Orissa at a lower rate than that fixed under the Customs Act.

The third section was necessary rather with reference to the mode in which the duty was leviable than with reference to its amount. The Governor General in Council had now legal power to lower the duty and to fix it at any sum not exceeding three rupees. The rate henceforth would be less than rupees three all through the Central Provinces to Jabalpur, but the mode in which the duty would be levied was new, and this required legal sanction.

The fourth and last section was simply to transfer to the present Act the sections regarding penalties which existed in the present enactments.

Having thus explained the scope of the Bill and its details, he had every reason to hope that the Council would be unanimous in ratifying the measure.

The Hon'ble MR. COLVIN said the principal point which seemed to him to present itself for consideration with respect to this Bill was merely whether the alteration which it proposed in the Salt-duties in Ganjam, in Orissa, and in the Central Provinces, in order to effect the abolition, in part at least, of the cumbersome and expensive arrangement of our Inland Customs-line, was likely to create any such serious disturbances to the salt-trade in those districts as would counterbalance its claims to support as a means, if not the only means, of attaining that very desirable end, as well as on the more general ground of its being a step towards the equalization of the Salt-duties throughout India, although that was not its more immediate purpose. He could scarcely profess to pronounce a precise opinion as to how the graduated scale of duty proposed by the Bill would work; but the scheme seemed to guard carefully against any sudden fluctuation of price along the line, and he was not aware of any reason why the Council should hesitate to pass the Bill at once. He was, therefore, ready to give the Bill his support, and, in doing so, he trusted he should not be over-sanguine if he expressed the hope that what it proposed to effect along the southern portion of the Customs-line might, at some future time, be done in regard to the whole length of that line, and that the result of the approximation of the salt-duties in certain places might hereafter result in their general equalization throughout India.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE had to say but a few words in regard to this Bill. He remarked that he was not one of those ultra-philanthropists, who were not slow in raising a hue and cry against the salt-tax, and held that salt was not a commodity which ought to be taxed at all. He was not one of those sentimentalists who thought so. He was of opinion that all classes of the people should bear the burthen of taxation each according to its means and circumstances. He had gone over this Bill most carefully, and he did not see any objection so far as the provisions of the Bill were

concerned. The first section provided that salt in Ganjam, which was a part of the territories under the Madras Government, should be sold at a fixed price of two rupees and four annas per maund, which, though more than what they used to pay, was much less than what the people of Bengal paid as a tax on salt, and he did not think that the people of Madras would complain, considering the relief it would afford them from the exactions and oppressions of the Customs Police.

The second section of the Bill related to Orissa. The rate of tax upon salt was there fixed at a maximum of three rupees and four annas, and at a minimum of two rupees and four annas. That was not an increase of taxation. Three rupees and four annas per maund was the tax which the people of Bengal paid for their salt. The tax in Orissa was fixed on a graduated scale, ranging from three rupees and four annas to two rupees and four annas, leaving it to the discretion of the Government to fix the exact amount leviable at any place in that province. None was in a better position to do this satisfactorily than the Government; they would be able to exercise that power beneficially for the interest of the people, and he was quite sure that it would be so done.

With regard to the Central Provinces, the Bill provided for a mileage rate upon salt transported from the Bombay Presidency to the Central Provinces. No doubt this arrangement was a wise one, because, in taking salt from Bombay to the Central Provinces, the people who transported it were subject to the evils of the preventive line, but the fixed mileage rate would do away with those abuses.

He thought that this Bill should pass, because there was a decided advantage to the people, who would be free from the annoyances and oppressions of the Customs Preventive Officers. Indeed, taking the Bill as it was, he thought that it was more in favour of the people than otherwise, for its object was to confer upon them substantial benefit and not to bring in an accession of revenue. With these observations he begged to say that he was glad to support the Bill.

The Hon'ble MR. DALYELL said that on the last occasion on which the subject of salt-duties had been discussed in the Council, some five years ago, hopes were held out that at some future date the high rate of taxation in the northern provinces of India would be reduced. It was then stated that the seventy million people who paid the high rate consumed so little salt, that the sixty millions who paid the lower rate paid more revenue, although the rate of taxation was only one-half. It was indicated on that occasion that the

main reason which prevented the Government of India from equalizing the salt-duties all over the Empire, was the then critical state of imperial finance. He would fain hope, therefore, as his hon'ble colleague Mr. Colvin had just said, that the present Bill might be looked upon as an instalment of the larger measure to which MR. DALYELL had referred. His hon'ble friend Mr. Ellis had explained that the Bill would enable the Government to do away with a considerable portion of the customs-line which nearly encircled the Central Provinces, and to abolish entirely the salt-line between the Bengal and Madras Presidencies. It had also been estimated by the Salt Commissioner that the burden of the salt-tax would be very materially lightened to a population of something like three millions in the Central Provinces, and to a still larger population in Orissa and the Tributary Mahâls. So far, then, as one portion of the Bill was concerned, it conferred an unmixed benefit on the poorer classes of the people, and no doubt would receive general support. MR. DALYELL confessed that he himself thought the measure might have been carried out without an increase of taxation and without the slightest risk of loss to the revenue. For in spite of the assertion made by very high authorities, that the high rate of taxation in Northern India did not interfere with consumption, he could not bring himself to that belief. At any rate in support of the view he had taken was a statement recently published in the last Administration Report of the Bengal Government, to the effect that the gross consumption of salt in Bengal had not increased during the past ten years notwithstanding a large increase in the population. If MR. DALYELL's view was correct, any reduction of the higher rate of taxation must result in a very considerable increase of consumption, and would therefore probably eventuate in an augmentation of the revenue rather than in a diminution. This was often found to be the case when the rate of taxation on any article of general consumption in England was lowered. At the same time, with the strongly expressed opinions of those well versed in the subject before them, he could well understand that the Financial Department of His Excellency's Government did not feel themselves justified in taking the view which MR. DALYELL did, and that they were of opinion that the measure before the Council would involve a considerable sacrifice of revenue; and that, in order to meet that sacrifice of revenue, they had felt constrained to ask that the salt-tax should be slightly increased in that portion of the Madras Presidency from which the populations to which he had referred would mainly draw their salt supply in future.

That brought him to the consideration of another portion of the Bill, and, holding the views he did as to the probable effect of a reduction in the higher rate of tax, he could not consider it to be entirely satisfactory. He need hardly

say that he referred to the first section of the Bill, which empowered the Executive Government to increase the price of salt in the Ganjam district of the Madras Presidency by four annas a maund, or 12½ per cent. It had fallen to his lot on more than one occasion to be the exponent of the views of the Madras Government when it had been proposed on former occasions to increase the tax upon salt. So far back as 1867, as Secretary to the Board of Revenue, it had been his duty to explain that the augmentations of the tax which had taken place during the previous eight years had had the effect of raising it to a rate verging upon one which would prove repressive of consumption. Two years later, in 1869, as Secretary to Government, he had proposed to the Imperial Government on behalf of the Madras Government that the salt-duty in Madras should be raised from one rupee and eight annas to one rupee and eleven annas per maund, in view to assist in meeting the financial crisis then supposed, happily incorrectly, to be impending. The Madras Government on that occasion had eventually agreed to raise the price to the extent of five annas instead of three, although they anticipated some check on the consumption. The result fully proved the correctness of their view: for the salt-sales every year since that date had shown a considerable decrease. Under these circumstances, it was not surprising that the Madras Government should object to any further increase in the price of salt in that particular district in which the poverty of the lower classes made them least able to bear such a burden. At the same time, having in view the advantages to be obtained by a much larger portion of the population of the whole Empire, they had signified their approval of the measure. And MR. DALYELL desired to take this opportunity of expressing his appreciation of the careful and favourable consideration which His Excellency's Government had given to the Madras views on this question—a consideration which had, in the first instance, resulted in the reduction of the amount of taxation by one-half, namely, from a proposed increase of eight annas to an increase of four annas, and which would further result in the actual amount of taxation being confined to an increase of four annas in one only of the four salt depôts of the Ganjam district, and to a still smaller rate of increase at another depôt. The grant, too, of an additional provincial assignment to the Madras Government for expenditure in the Ganjam district, was a further earnest that His Excellency desired to deal liberally with the people of Ganjam so far as was consistent with carrying out the administrative reform under consideration. It would doubtless then be satisfactory to His Excellency to be made aware that, so far as MR. DALYELL had been able to ascertain, the increase of the salt-tax which took place in 1869 had not had the same effect upon the consumption in the Ganjam district as it had in other parts of the Presidency.

In the year the tax was increased, the quantity of salt issued for use in the district was a little over a lákh of maunds, whereas in the year 1871-72, the last year for which he had received the returns, the salt taken up for home consumption amounted to one-and-a-half lákhs of maunds. We might, therefore, reasonably hope that the present slight enhancement of taxation would not have the effect, to any extent, of depriving the poorer classes of Ganjam of what in this country was a very important necessary of life, though it might have the effect of slightly increasing the price. As to this increase of price, it must be remembered, however, that the State could only endeavour to secure the greatest happiness to the greatest number, and that the minority must be prepared sometimes to undergo some deprivation if a great benefit was secured to a large majority. This seemed to MR. DALYELL to be precisely the case on the present occasion. The advantage gained by the people of Orissa and a large part of the Central Provinces by obtaining a sufficient supply of salt for themselves and their cattle at a moderate price would be very considerable, and the benefits they would secure by the abolition of a portion of the customs-line were, as his hon'ble friend Mr. Ellis had said, incalculable.

To give the Council some notion of the oppression and annoyance caused by this line, he would ask permission to read two extracts from the reports, one from the Commissioner of Chhattísgarh and the other written by their late colleague, Sir George Campbell, when Chief Commissioner of the Central Provinces. Mr. Pedder said:—

"But high as is the duty, it would be paid cheerfully by the people, were it not for the system under which it is levied. Since the first introduction of the customs-line into Chanda in 1865, I have carefully watched its working, and, in giving the results of my experience, I would refer to Chanda as well as to Chhattísgarh.

"The customs-line runs along the western frontier of Chanda to the junction of the Wardha with the Waingunga; then crosses the latter river, and runs from south to north through the centre of the district, passing out at the Raipúr boundary. It then crosses the Raipúr district in a generally easterly direction, and runs partly through the Sambalpúr district, also with an easterly course, terminating east of the Mahánadí. Its total length in the Chanda district is 200 miles, and in the Raipúr and Sambalpúr districts 265 miles: and as customs jurisdiction extends over a breadth of 15 miles along the line, nearly 7,000 square miles of country in the three districts have been made subject to the intricate rules and heavy penalties of customs jurisdiction, and those rules are worked by a set of officials, who, as a body, are not of a high class, who have a direct pecuniary interest in making out cases of smuggling, and who practically are uncontrolled in the exercise of their powers. Along the 465 miles of road, travellers are liable to be constantly stopped and overhauled at the discretion of the customs peons; and over the 7,000 square miles of country, the possession, or the suspicion of the possession, of salt, carries with it difficulty, vexation and danger."

Sir George Campbell writes :—

"Throughout the Chief Commissioner's tour, it has seemed to him that the customs-line has been felt by the people as a greater grievance than all other grievances put together; no one can travel along the valleys of the Narbada and the Wardha without being liable to constant search by endless customs officers of low degree, posted at very short intervals, armed with iron search-forks of the nature of cheese-tasters.

"Previous to the establishment of the customs-line, Chhattísgarh was the home of Banjáras, who used to take grain to the south in large caravans, and return laden with salt from the east coast, which they carried over all parts of Chanda and Chhattísgarh. The trade was a very important one, and rendered salt cheap and abundant in the wildest tracts. But the restrictions of the customs-line, not the duty on salt, have nearly destroyed this trade; many of the Naiks have been ruined, and most of the clans have emigrated,—a result deeply to be deplored."

In conclusion, MR. DALYELL would wish it to be understood that it must not be supposed, from the remarks he had felt himself called upon to make on this Bill, that he was at all opposed to a salt-tax as a general measure of taxation. He felt that it was impossible to reach the mass of the population by a direct tax, and even if it were possible to do so, he felt convinced that indirect taxation was much more suited to the circumstances of the country. Salt was the only commodity which was universally consumed, and which could take the place in India of those commodities on which so large a portion of the revenue of Great Britain was raised with such great facility and with so little complaint; and he felt sure that if the tax was moderately and properly worked, it would operate as a moderate poll-tax, and there could be no objection to it. He would, therefore, support the measure before the Council, and would also state that he quite agreed with what had been said as to the necessity of suspending the rules and passing the Bill at once,—a course which had always been taken when the salt-tax had been raised on previous occasions, and if omitted now would be liable to lead to a considerable disturbance of trade.

His Highness THE MAHÁRÁJA OF VIZIANAGRAM said that from what had fallen from his hon'ble friends with regard to the Bill, the objects of which had been so ably explained by his friend the Hon'ble Mr. Ellis, he had only to say a very few words on the Bill.

Its main objects appeared to be a reduction of the salt-tax over a considerable part of the country, and he quite concurred in thinking that lowering the price of salt in Orissa and a large portion of the Central Provinces would have the effect of enabling the masses in those parts of the country to increase their consumption of this necessary of life; and that the measure, although involving a relief from taxation, would, he hoped, result in an increase of revenue. It was

of course a subject for regret that, in carrying out the measure, it had been found necessary to raise the salt-tax in the Ganjam district, but from his knowledge of that part of the country he was not of opinion that the increased tax was at all beyond what the improved circumstances of the people would enable them to bear. With the above remarks and observations he had much pleasure in supporting the Bill.

The Hon'ble MR. ELLIS then moved that the Bill be passed, and said, after what had fallen from hon'ble members of Council, he had no hesitation in asking His Excellency the President to suspend the rules so as to permit the Bill to be passed. The remarks that had been made being generally in accord with what he had himself said, he need not refer to them at any length. He would state, with reference to what had been said by the Hon'ble Mr. Colvin, that it had been the object to take our measures so as to obviate any prospect of great disturbance to the course of trade. It was chiefly with that object the rate of duty in the southern portion of the Central Provinces had been lowered, otherwise there would be a chance of the Bombay salt being displaced by salt brought from the other side. And with a similar object we had graduated the duty on salt to Jabalpur, so as to prevent its displacing salt from Calcutta, except in the natural course of trade. The present Bill would confer on the salt of Western India no advantage, because at Jabalpur the salt would be chargeable with precisely the same rate of duty as now prevailed in that portion of the Central Provinces and in the North-Western Provinces beyond. As regards the increase of duty in Ganjam, to which the Hon'ble Mr. Dalyell had referred, it was not the object to regain a small portion of the loss we were likely to incur by lowering the duty elsewhere, but it was to prevent the lower-taxed salt displacing the higher-taxed salt that we were compelled to place a slight increase of duty on the salt in a very small area of the Madras Presidency. Had the object been an increase of our fiscal resources, we should hardly have presented to the district of Ganjam the sum which represented the additional taxation on that district. Had not steps been taken to prevent salt which paid a tax of one rupee thirteen annas a maund from passing into districts where salt paid three rupees and four annas, the abolition of the customs-line would not only affect the Government duty, but would disturb the course of trade. Therefore, both in Western India and in the Eastern Provinces, we had done our best to prevent such a disturbance.

His Excellency THE PRESIDENT said:—"Having heard the general approval which Members of Council have given to this Bill, and the expression of their opinion that it would be right to pass it into law immediately, in order to pre-

vent possible inconvenience to trade, I have no hesitation in suspending the Standing Orders, in order to allow the motion to be put, that the Bill be passed.

"Before doing so, however, I wish to say a few words. The Council will remember that, in the autumn of the year 1872, the Government of India issued a circular to the different Local Governments and Administrations, calling for the opinions of local officers, both European and Native, of the greatest experience, as to the effect of the existing system of taxation upon the people throughout all parts of the country. The answers to that circular were circulated to the Members of the Legislative Council, and those who have paid attention to Indian finance will have observed that several taxes to which objections were expressed by the most experienced officers have since that time been modified or repealed. The officers of the Central Provinces pointed out that the customs-line, both to the north and south of those provinces, was one of the measures connected with taxation of which the people most complained. My hon'ble friend, Mr. Dalyell, has to-day explained in the graphic language which was characteristic of the late Lieutenant-Governor of Bengal, the manner in which the customs-line operates to check intercourse and trade between one side and the other of the hedge or barrier which extends along many hundred miles of country.

"It has, since the year 1872, been in the mind of the Government of India at any rate to make a step towards the removal of this barrier. It is unfortunately out of our power to attempt to deal at present with the northern customs-line; but the removal of the southern customs-line appeared to us to be a feasible measure, and I am happy to say that, owing to the care and attention of my hon'ble friend Mr. Ellis, and to the co-operation of the Governments of Madras and Bombay, which I desire to take this opportunity of acknowledging, we shall, when the Council passes this Bill, be able to dispense with it.

"The effect of the Bill, as has been pointed out in the course of the discussion, will be to reduce the tax on salt over a considerable extent of country. On the other hand, it will be necessary that the people in a portion of the district of Ganjam, in the Madras Presidency, shall submit to a slight increase in the tax in a very limited area; but at the same time the Government of India propose to devote the whole of the amount derived from that increase to the district that pays it, by making an additional grant for that purpose to the Madras provincial assignment. Moreover, the people of Ganjam are likely to benefit considerably from the removal of the customs-line. They will be able to obtain grain from the Central Provinces without the intervention and obstructions of the customs-line, and whatever extra charge they may have to

pay for salt will, I believe, be recouped by the free opening of their trade with the Central Provinces and Orissa.

"Some observations were made in the course of the discussion as to the general incidence of the salt-tax. I do not propose to go into that question; but to judge from the answers which we received to the Financial circular of 1872, the opinion expressed by Rájá Ramánáth Tagore and other members of Council to-day, that the salt-duties are not oppressive, is correct, for hardly one of the experienced officers, either European or Native, who were then consulted, gave their opinion against the tax. At the same time there is no doubt of the advantage, which, as has been pointed out by the Hon'ble Mr. Colvin, would arise from equalizing the salt-duties over the whole of India, not because those duties are at present excessive, but because their reduction to an uniform rate would enable the Government in times of emergency to raise funds for the service of the State in a safe and unobjectionable manner by increasing those duties.

"This Bill will, in addition to its primary object, also, to a certain extent, enable the Government to judge how far the arguments which have been used by some and not accepted by others, that the effect of reducing the salt-duties would be to increase consumption, are correct or not."

The Motion was put and agreed to.

MAJORITY BILL.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM moved for leave to introduce a Bill to establish a uniform age of majority for persons domiciled in British India, and said, "my Lord, I have the honour to ask permission to introduce a Bill which was drafted during the last session of the Council here, and which in the interval that has elapsed since that time has been circulated for the opinion of the Local Governments and other authorities throughout the country. The expressions of opinion which have been thus obtained have encouraged me to persevere in bringing the Bill before the Council in the hope that the measure may, in some form or other, become law at an early date. The Statement of Objects and Reasons prepared in support of the Bill refers to the present unsatisfactory state of the laws regulating the age of majority now in force in this country. I do not propose to recapitulate what is there advanced. The law continues to be in the same uncertain state as it is there shown to be, and I believe I am right in saying that at this moment, for example, no one can state with certainty what is the age of majority for all purposes of a person resident in one of the presidency towns and possessed

of property situate in the Mofussil. I shall, therefore, make no further reference to the facts set out in the Statement of Objects and Reasons beyond taking the opportunity of correcting a mistake in that statement as to the age at which Muhammadans legally attain majority. It is there alleged in accordance with a dictum in Macnaghten's Principles of Muhammadan Law that, by that law, the age of majority is the end of the sixteenth year. I have since been referred to the original authorities on which Macnaghten's work is based, and from them it appears that the age of majority established by the Muhammadan Law is the end of the fifteenth year, or in certain cases even earlier.

"The laws of all nations are agreed in recognizing the fact that immaturity of years constitutes to a greater or less extent a personal incapacity to do a legally binding act, and to be personally responsible for one's actions. But the age or ages at which such incapacity and irresponsibility shall cease are purely artificial, and even amongst races exposed to similar physical conditions greatly vary. Thus on the Continent of Europe at the present day the age of full majority in England is twenty-one, in France twenty, in Prussia twenty-five, in Spain twenty-five, in Denmark twenty-five, in Russia twenty-one, and so on. With, however, the exception of this country, I am not aware of any civilized state which does not possess a general law of majority affecting the body of its subjects, and regarded as the territorial law for all persons contracting in that country. The importance of some such uniform law is manifest in the matter of contracts. According to the law of England, the capacity to contract is determined by the law of the place in which the contract is made; and it is plainly equitable that a subject of such place contracting with a foreigner should not be required to look further than the law with which he is presumed to be acquainted, to ascertain whether the person seeking to contract with him is or is not competent to do so. Thus, a person in England about to contract with, say, a Prussian, has only to satisfy himself that the Prussian is over the age of twenty-one to be assured that he cannot afterwards seek to evade his obligations under the contract by pleading minority. In this country we find it difficult to say at what age such Prussian is first competent to contract. It is for reasons such as these that it seems desirable that in this country there should be an uniform age of majority established by law. This object is sought to be obtained by the Bill, which I have the honour to move for leave to introduce in the Council. The question what that age should be is a matter admitting of much difference of opinion, and which may be considered hereafter if your Lordship be pleased to entertain the Bill. In the same way it may then be determined whether it is expedient

to have one age of majority for all purposes, or whether it is preferable to have different ages at which persons may first become capable to perform different functions and incur different responsibilities. The question to which the Council will doubtless agree with me in thinking, I have now only to address myself, is whether it is necessary or expedient that there should be a legislative enactment for the purpose of rendering the law on this subject more simple and uniform. On this point I trust I may not be deemed to be out of order in referring to the opinions received from the authorities who, as I have already stated, have been consulted on the matter, and which opinions, I offer my best thanks to my friends, the Hon'ble Mr. Bayley, and the Home Secretary, Mr. Lyall, for kindly permitting me to see. I trust that I may not be thought presumptuous in saying that the Bill need not interfere with the religious rites of either the Hindús or the Muhammadans, and indeed on this point the ruling of this Council is explicit,—*vide* section 19, Indian Council's Act—

" 'Provided always that it shall not be lawful for any member or additional member to introduce without the previous sanction of His Excellency the Viceroy and Governor General, any measure affecting * * * * the religion or religious rites and usages of any class of Her Majesty's subjects in India.'

" In fact, in the opinions of all the persons supposed to be affected by that interference, who have expressed their views on the matter to the officers of Government, no such fear exists. This is explicitly stated in the returns made by the Commissioner of Patna and the Government of Bombay respectively, as regards the Muhammadan inhabitants of Patna and Bombay. The one exception is in the case of the Muhammadan Literary Society to which I shall allude, but I need merely say with reference to that, that it is on this point in conflict with the opinions of the great Muhammadan communities of which I have spoken and of such men as Munshi Amír Ali, Khán Bahádur, and Sayyid Ahmad, Khán Bahádur, who had been good enough to favour me with their views on the question. Even in the Muhammadan religion the age of majority, as observed by the commentators of the Koran, "Durrúl Mukhtár" and "Tafsír Husaynı́," is as follows. The opinions of these two celebrated commentators are admitted and bowed to throughout the Muhammadan world of Europe and Asia.

In the Koran it is said—

[وابتلوا اليتامى حتى اذا بلغوا النكاح فان آنستم منهم رشداً فادفعو اليهم اموالهم]

"Which means 'Try the orphans until they arrive at the age of puberty, and then if you see and find out that they are able and competent to find out the true path of their life-journey make over to them their property.'

"Tafsír Husaynί, commenting on the above—says: Before delivering up to children their property they should be tried, in the case of boys, as regards their judgment, intellect and capability in making bargains and taking care of their goods; in the case of girls, as to their knowledge of spinning, weaving, and proper management of domestic and household affairs in general, even if they have attained 'bulúgh' or the age of puberty. When boys and girls are found thoroughly able to judge good from bad, of understanding religious matters and managing their property efficiently, or, in other words, when they are found to have attained 'rashad,' namely, the true path, their property should then be made over to them. 'Durrúl Mukhtár,' which is a fikah, namely, on which all the Muhammadans observe religious acts, rites, &c., says—

[فان بلغ الصبي غير رشيد لم يسلم اليه ماله حتى يبلغ خمساً و عشرين سنة]

"Which means, 'Though boys and girls who may have attained 'bulúgh' or the age of puberty, be yet found not to have attained 'rashad' (the true path) or sufficiently able to look after their own interests properly at an earlier age, their property should not be made over to them till they are 25 years old. I shall not occupy the time of the Council with further commentaries, which are acknowledged by all the Muhammadans of India, Western Asia and Europe. I merely beg to add that there are innumerable authorities to support the above-mentioned views, which can be produced if required.—*Vide* Maalam úttanzíl Baydhavi commentaries and fikahs.

"It is to be regretted that such high authorities should not have received that attention from the Muhammadan Literary Society which they deserved from a body who make it their avowed object to improve and raise the social and religious condition and status of their Society. Very likely the leading members of that community and its Secretary, Maulaví Abdul Lutíf, Khán Bahádur, overlooked their existence. Besides, such an acknowledged and highly respectable Muhammadan authority in Bengal, as my learned friend Munshi Amír Alí, Khán Bahádur, has been good enough to send me the paper containing his opinion on the matter, which I beg to read—

"'His Highness the Mahárájá of Vizianagram having referred to me for an expression of opinion upon a Bill introduced by His Highness in the Legislative Council to establish a uniform age of majority for persons domiciled in British India, I beg to remark that in my opinion the age regarding majority prescribed in 'Shara' or Muhammadan Law is virtually with direct reference to young persons acquiring right for practising offices connected with religion, and that, therefore, there does not appear to me any objection for the civil authority to fix by legislative enactment a uniform age of discretion on attaining which individuals of all classes of Her Majesty's subjects of either sex may exercise civil rights and privileges. I think too that the age of 18 years proposed in the Mahárájá's Bill is most unobjectionable for starting in civil life.

"'This principle has been in force regarding succession to landed estates under the provisions of Regulation XXVI of 1793, which, as far as I am aware of, has worked over the long period of 80 years without causing dissatisfaction.

"'I assume that the scope and intention of His Highness' Bill is to extend the operation of Regulation XXVI of 1793, to all civil matters and transactions instead of landed proprietary simply, and I am inclined to believe that such extension will in its action be attended with convenience and benefit.

"'Understanding then the proposed Bill as one for fixing a uniform age of majority for purely civil purposes and not for anything provided by the sanction of religious authority, I see no reason that there should be any objection to its passing into law.'

"And my learned friend, Maulaví Sayyid Ahmad, Khán Bahádur, to whom I had spoken several times on the subject in Benares, is of the same opinion. If I may be allowed on this matter to bring in my personal feeling and experience as a Hindú, I would say that the question of the age of majority is in no way regarded as a matter of religious sentiment by any sects or individuals of the creed to which I belong. Why, amongst all nations, even after a few days after the birth of a child, he undergoes a religious ceremony, namely, numakurnum or christening, but this religious ceremony, as it does not clash with his civil rights, will not be at all interfered with by the principle of this Bill. Manu, the greatest authority in the Hindú religion, whose institutes are highly approved of, nay even venerated in the western world, says, in the first sloka of the 4th Chapter,

॥ चतुर्थमायुषोभाग मुषित्वाद्यं गुरौद्विज: ॥
॥ द्वितीयमायुषोभागं कृतदारोगृ हेवसेत् ॥ १ ॥

which means, 'one-fourth of man's life should be devoted for the accomplishment of education under the tutor to prosecute the worldly and holy studies. The second part of the life's portion should be entered in a married life.'

"It is said in the Vedas, and very well known in the civilized world, that a man's age is 100 years, and when Manu said one quarter of the first portion of the life should be devoted for prosecuting the different useful and important studies for the accomplishment of a man as a bachelor is 25 years, and, even taking the present average of human life, it may be fairly said to be 75, and a quarter of that is a few months more than 18. From this it is plainly shown that the student should wait till 25 to complete his education, and then he may be called a major. But when the pandits gave the sloka—

॥ गर्भस्थ: सञ्चोद्वेय: आद्ध मादस्सराद्विषु: ॥
॥ बाल आषोडषाद्वर्षात् पौगंडश्चेति राद्यते ॥
॥ परतोत्यवहारज्ञ: खतंत्र: पितरावृते ॥

which means 'from the moment God gives life till 8 years of age a child may be considered as if in the womb. From his eighth year till his sixteenth year he may be called a boy and then a youth; after that period he can begin to see for himself independent of his parents.' This sloka is from the *Nárada Smriti*; and about 100 years ago, when the pandits in their representation to Government made use of it to establish 16 years as the age of majority, they evidently gave it a wrong interpretation, because at the same place in the Nárada Smriti it is distinctly said thus—

॥ अप्राप्त व्यवहारश्च स्वतंत्रोपिहिनर्थभाक् ॥
॥ स्वांतंत्र्यं तु सुतं ज्येष्ठे ज्यैष्ठ्यं गुणावयः कृतं ॥ १ ॥

which means that, although after attaining the age of puberty if you see that he is incompetent in looking after the affairs in general, you must not recognize him as a major, neither can he have any demand for his property. In the case of orphans the eldest son is merely called the head, but when he has sense enough and competent to look after the affairs properly in all purposes, it is *at that age* that he should be recognized as having attained *the age of majority*. In the words of the Committee of the British Indian Association, speaking for the Hindú community, the question of the limit of minority is not regarded as a matter of religion or conscience, and an alteration of it is not, therefore, open to the charge of religious interference on the part of the Government. The second ground of objection to the measure I am seeking to propose taken by the Muhammadan Literary Society here, is that the Bill may disturb the present law relating to marriage and divorce amongst the Muhammadans. To this I may now merely say that the Bill I propose to introduce will not attempt to interfere with such matters, but will be confined to the general status of a minor with reference to contracts and the disposal of his residence and education. Their Lordships the Judges of the High Court of Bombay have been pleased to say that they all consider that the thanks of British India should be given for such a needed measure. The late Hon'ble Mr. Justice Dwarka Nath Mitra, the only one of the Judges of the Calcutta High Court who furnished the Government with an expression of opinion on the measure, entirely approves of its general policy, and considers legislation on the subject to be absolutely necessary.' Similar opinions have been given by the Chief and Judicial Commissioners of Oudh, the Chief Commissioner of the Central Provinces, the late Chief and the Judicial Commissioners of Assam, the Chief and Judicial Commissioners of Coorg, the Commissioners of Orissa, Chutiá Nágpur, the Rájshahai Division and Patna, the Resident of Haidarábád, and the Hon'ble Mr. Beaufort and Mr. C. D. Field, the then Commissioner of Chittagong. If nothing else were sought to be attained by this Bill than

certainty as to the age or ages at which individuals can incur binding legal obligations, it would, I trust, in the admitted uncertainty of the laws on the matter now prevailing in the country, be favourably received by the Council. In the great department of contracts, the recent Act, which is now the general law of the country, has made the agreement of a person who has not attained the age of majority to which he is subject, absolutely void, and not merely voidable, or capable of being ratified on the attainment of majority as hitherto.

"It is obvious that if in any classes of cases it is uncertain what is the age of majority at which a person can make a binding contract, there exists a direct check on the freedom of contracting, and an inducement to persons contracting with those who may or may not be able to repudiate the engagement to exact for themselves such ultra-favourable terms as may compensate them for the risk they incur.

"The Judges of the High Court of the North-Western Provinces fully approve of the principle of the Bill. The members of the Board of Revenue of the North-Western Provinces have certain objections and state as follows—'The Board have grave doubts of the policy of the measure proposed by the Mahárájá of Vizianagram, and suggests that if the Government of India decide in carrying the Act through, that the work should be entrusted to the Law Member of the Council.'

"His Honour the late Lieutenant-Governor of the North-Western Provinces was of opinion that there is much weight in the Board's objections. Therefore, to the Hon'ble Mr. Hobhouse, who is one of the greatest and most learned and eminent jurists in the world, I make over the charge of the Majority Bill, agreeably to the opinions of His Honour the Lieutenant-Governor of the North-Western Provinces and the members of the Board of Revenue of those provinces. I hope my friend the Hon'ble Mr. Hobhouse will kindly take charge of this Bill, and I shall be happy to give him any assistance that lies in my power with regard to this measure."

The Hon'ble MR. HOBHOUSE said the Mahárájá of Vizianagram had appealed to him to take up this Bill. MR. HOBHOUSE answered by saying that he should be very happy to assist the Mahárájá in the progress of the Bill so far as MR. HOBHOUSE was able to do so. The Mahárájá had, however, greatly over-estimated the amount of assistance which MR. HOBHOUSE could give him. He was, he grieved to say, not an eminent jurist. He was only a practising lawyer, of somewhat plodding habits, and some professional experience. Still, such as his faculties were, they were quite at the Mahárájá's

disposal; and he should be happy to promote the objects of the Bill so far as they ought to be promoted. Indeed, from a lawyer's point of view, the Bill contained nothing but good, because there would be great legal advantage in simplicity and uniformity as regarded the law of majority. The circumstances which the Mahárájá's industry had brought to light shewed that the law was not in a satisfactory state. It was anomalous that a Hindú should inherit property at one age, a Muhammadan at another age, and a Christian at a third age, seeing that the three were born and bred in the same climate, had like constitutions and capacities, and formed members of one community. It was very absurd that a person born on one side of the Mahratta ditch should attain majority at one age, and another, say his cousin, born on the other side of the ditch, at another age. All anomalies of this kind caused practical difficulties in administering the law. Therefore, so far as the Bill could be legitimately maintained, he should be happy to give it his support.

Of course a statesman's point of view differed from that of a lawyer, but with MR. HOBHOUSE's present information he did not think there would be any political difficulty in proceeding with the measure. He had not seen the provisions of the Bill, and therefore he could not say whether he should approve it or not; before he could say that, he must look into the details. But he judged from the Mahárájá's speech that he would take care to steer clear of rocks, and to see that the feelings and sentiments of the people were not rudely encroached upon. He collected that the Bill would be confined to such matters as contracts and the custody of the property and person, and that it would not seek to affect such matters as marriage, divorce, adoption, or the performance of religious rites. Indeed, as regards the religion or the religious rites and usages of the people, a Bill could not, as his hon'ble friend had reminded them, be introduced by any member without the previous sanction of the Governor General, which, so far as he knew, had not been accorded. The Mahárájá had argued at some length that the question of majority would not touch any religious question, but MR. HOBHOUSE thought it would be better to provide expressly that it was not intended to interfere with the religious usages of any class of persons.

As to other matters, the Bill steered clear of the matters he had mentioned, and confined as it was in its scope, he did not see any reason why it should not be regarded as a measure of reasonable reform. He must ask the Mahárájá to keep charge of the measure, but either in his presence or in his absence, MR. HOBHOUSE would be glad to afford him such assistance as he could conscientiously give.

If then the Bill steered clear of the perilous matters he had mentioned, MR. HOBHOUSE did not see any reason why it should not effect a very useful reform, not only by giving greater uniformity to the law, but by postponing the age of majority and providing a better measure of the capacity of a young man to manage his affairs, to bind himself by contract to decide upon his own residence and his own education.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE, with the permission of His Excellency the President, moved that the Hon'ble Mr. Colvin be added to the Select Committee on the Bill for the further amendment of Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*) and for other purposes.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for the further amendment of the Burma Courts Act, 1872—The Hon'ble Mr. Bayley and the Mover.

On the Bill to consolidate and amend the law relating to Ports and Port-dues—Major General the Hon'ble Sir H. W. Norman, the Hon'ble Messrs. Inglis and Colvin and the Mover.

The Council then adjourned to Tuesday, the 5th May 1874.

CALCUTTA,
The 21st April 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt. Govt. Printing.—No. 37 L. D.—28-4-74.—350.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 5th May 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K.C.B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble J. F. D. Inglis, C. S. I.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Rájá Ramánáth Tagore.
The Hon'ble B. D. Colvin.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure be taken into consideration. He said that he should not have thought it necessary to address the Council any farther in explanation of this Bill, had it not been that the Secretary had placed in his hands a memorial of the British Indian Association desiring that some amendments should be made in the Bill. The greater part of this memorial related to matters which were either in the Bill as introduced, or were in the Code of Criminal Procedure as it now stood, and as to which the Bill made only some very small alterations. As to all such matters, he thought it was incumbent upon those who contended for any material alteration to have addressed themselves to the Select Committee, and not to address the Council at the very latest moment. But, considering the most respectable quarter from which this petition emanated, he thought it proper to acquaint the Council with what it contained; and if, after hearing its contents, any hon'ble member desired to move an amendment to the Bill as it stood, or to postpone the consideration of the Report, he should be prepared to ask His Excellency the President's permission to adjourn the matter. But if there was no such desire on the part of any member of the Council, he would be prepared to proceed with the motion that the Bill be passed.

The Memorial commenced as follows:—

"Your Memorialists have perused the Bill to amend the Code of Criminal Procedure as amended by the Select Committee, and feel grateful for several improvements introduced in it by that Committee.

"Your Memorialists, however, notice certain new provisions in the amended Bill, which, as they humbly conceive, are based on questionable principles, and are calculated to work injuriously in practice. They crave leave to submit the following remarks in respect of some of those provisions for the consideration of your Excellency in Council.

"Firstly, it is provided that 'whenever it appears to the Governor General in Council that it will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, and the Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in or presented to such Court.'

"Your Memorialists feel persuaded that this power will be but rarely exercised by His Excellency the Governor General in Council, and that always with great caution. But they take leave to doubt whether the vesting of such power in the Executive Government is consistent with the general principles of administration of justice in this country. It is a recognized principle of English law that the action of courts of justice should be perfectly unfettered, and the British Government in India is justly jealous of the freedom of those Courts. Indeed, of the many excellent features of British rule in India none makes a greater impression upon the people of this country than the fact that the courts of justice enjoy perfect freedom; that not only do they try issues between subject and subject, but between subject and Government, and *vice versa*, and that the Judges are thoroughly independent in deciding upon those issues, though their decisions may be adverse to the Government to which they are indebted for their existence. But this freedom, your Memorialists are constrained to think, will be jeopardized if power be given to the Executive Government to transfer a criminal case from one High Court to another at pleasure. It is impossible to divine the sort of cases in which this power may be exercised; but supposing that the Government gives effect to the provision in cases in which it may be interested one way or another, it will be as an interested party selecting its own Court, and the effect of such a proceeding upon the popular mind cannot but be prejudicial. Should this power be exercised at a time of political excitement, that effect would be still more aggravated; while the slur which would necessarily be cast upon the High Court from which the case is transferred in the estimation of the people would be very grave. Your Memorialists are fully sensible of the exceptional position of the British Government in this country, but they humbly think that the existing law is strong and wide enough to meet exigencies of a political character. It may be urged that the proceeding contemplated may be needed for the furtherance of the 'ends of justice,' but your Memorialists fear that although the Government may be acting from the best of motives, it may however be misunderstood and misinterpreted. It is well known that the several High Courts command the highest confidence of the people, but the very action of Government implied in this course may induce doubt and distrust in their minds where there was none. Your Memorialists venture to remark that they cannot conceive

how the 'ends of justice' can be better promoted by transferring a criminal case from one High Court to another; for if the Court thus superseded is competent to do justice in other cases, it ought to be equally competent to do justice in that particular case. On the other hand, if it be deemed necessary to transfer a case with a view to promote the general convenience of parties or witnesses, that object may be attained by giving the necessary power of transfer to the several High Courts. The High Court will have a better opportunity of judging the matter than the Executive Government, which cannot have the means of examining both parties like a constituted tribunal of justice."

That was a matter which was in the Bill when introduced, and the object was fully explained at the time. He thought the gentlemen who submitted this memorial had totally mistaken the object of the provision. The object was not to take away a case from one Court which was expected to decide it in one way, and to transfer it to another Court which was expected to decide it in another way. The object was to meet cases in which either from local political excitement, or from the abode of the witnesses it was convenient to try a case in one province rather than another. Now it was common enough to transfer cases from one District Judge to another District Judge. But it was not left in the hands of the District Judge to transfer the case from his own Court. The application was made to the common superior of all the District Judges, the High Court; and the High Court decided as to the necessity for the transfer. He never yet heard that it was considered a slur on any District Judge when, for the convenience of witnesses or anything of that kind, a case was transferred from one District Judge to another. But the High Courts had no common superior, and it was impossible to remove a case, or, as lawyers called it, "change the venue," from one High Court to another High Court. For this purpose then the Bill created a common superior where at present no common superior could be found.

The memorial referred next to section 16 of the amended Bill, and quoted the Explanation which the Bill added to that section. It continued thus:—

"This Explanation, your memorialists fear, will have an injurious tendency. It will encourage laxity of procedure. A complete idea of a charge can be best formed when the evidence of the prosecution is completed. Your memorialists submit that the necessity of giving the Magistrate the latitude which this Explanation covers is not clear, not to say that a charge framed upon incomplete evidence may be found to be defective or insufficient."

It was a small point and a matter solely of general convenience. The amendment was made by the Select Committee. As the Code at present stood, the charge could not be drawn up until after all the witnesses for the prosecution had been heard. Magistrates found that inconvenient; they found themselves obliged to take a quantity of unnecessary evidence. The change would not

prejudice the prisoner, but if occasionally a charge missed its aim from being prematurely framed, it would rather favour the prisoner. But the generally convenient course was to give discretion to Magistrates, and leave them to judge for themselves when it was proper to frame the charge.

Then the memorialists quoted section 20 in the amended Bill, and of it they said:—

"There are, your memorialists submit, serious objections to the course sanctioned by this section. It is well known that a defendant labours under great disadvantage in the preliminary trial before the Magistrate, and that he is generally so much overawed by the Police that he not unfrequently considers it safe to reserve his defence for the Sessions. If he is a poor and friendless man he cannot at once engage Counsel to defend himself, though it has often occurred that he has exhausted his last means to employ professional assistance at the Sessions. The evidence before the Magistrate is not therefore subjected to that sifting examination which his professional adviser applies at the Sessions. On the other hand, it is essential to the ends of justice that the Judge and jury should examine the witnesses personally, and watch their demeanour. It is also observable that the power given by this section will be liable to abuse, if the Judge happens to be fond of case. It needs be furthermore borne in mind that the old method of recording evidence in the form of question and answer has been done away with, and that the notes of the Magistrate are necessarily incomplete, and apt to mislead. All these considerations, your memorialists respectfully submit, suggest that the change proposed in this section is likely to do more harm than good."

The only alteration made by the amended Bill was this. The section was framed to enable the higher Courts to look at the depositions taken by the committing Magistrates. A more reasonable provision could not be conceived. It was already in the Criminal Procedure Code. There was, however, a doubt in respect to the existing section whether it applied to the High Court both in its original and in its appellate jurisdiction. That it applied to one of them was certain: the doubt was as to whether it applied to both. The Bill said it should apply to both. The argument in the memorial went, not against the thing effected by the Bill, but against the section already in the Code. The memorialists were against the Code as it stood quite as strongly as against the amendment made by this Bill. Therefore, he thought, their views ought to have been addressed to the Select Committee. The provision, however, was a most defensible one. Its effect was to check a witness giving evidence before a higher Court by what he had said before the committing Magistrate. There was not the least reason to suppose that it would tell more against a prisoner than for him. It would tell sometimes one way and sometimes another. A witness might be tampered with on the part of the accused or on the part of the prosecution, and either way he would be checked by a comparison of his first story with his second. What the provision really did

tell in favour of was the truth, and to get at that should be the object of all our criminal procedure.

Fourthly the memorial said :—

"Section 22 provides that, in case of an appeal, reference, or revision, where the Judges of the High Court composing the Court of Appeal are equally divided, 'the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.'

"This provision, your memorialists submit with due deference, introduces an anomaly, which becomes apparent when its effect is contemplated in such a case as this. Suppose a Divisional Court is divided in opinion; one Judge convicts the prisoner on three out of five counts, and the other Judge acquits him on all counts, and the matter is referred to a third Judge, who again convicts him on a minor count, which has been rejected by the other Judges. All the three are Judges of the High Court, and presumably equally qualified, but the opinion of the third Judge will prevail out of a mere chronological accident. Your memorialists are humbly of opinion that it would be reasonable if the case were referred to a full bench in the event of such difference of opinion."

The effect of that would be that a number of trumpery points might be referred to a full bench and business would be seriously impeded. The sole object of the provision was that in such cases, the two dissenting Judges should be bound by opinion of a third Judge. That seemed to be a very reasonable and convenient way of disposing of small matters of business. If it was a large matter of business, it was competent to the High Court to decide with an adequate strength of Bench.

The memorialists concluded by saying :—

"The several provisions on which your memorialists have taken the liberty to comment are in their nature material alterations in the Bill, which they submit ought to be published for general information before their enactment into law. Should Your Excellency in Council, however, decide otherwise, your memorialists would then pray that Your Excellency in Council may be pleased to take the above remarks and suggestions into consideration, and to make such modification in the Bill as may to Your Excellency in Council seem fit."

That was the whole of the memorial. MR. HOBHOUSE had made such remarks as occurred to him. It did not seem to him that there ought to be any amendment made in the Bill in consequence of the receipt of this memorial. But if it struck any other hon'ble member differently, he was ready to postpone his motion.

No remark was made, and the motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

MAJORITY BILL.

His Highness the MAHÁRÁJÁ OF VIZIANAGRAM introduced the Bill to establish a uniform age of majority for persons domiciled in British India, and moved that it be referred to a Select Committee with instructions to report in six months, and said—"My Lord, the object of this Bill has been shortly set out in the Statement of Objects and Reasons, and at more detail when I had the honour to ask your Lordship's permission to introduce the Bill. I shall accordingly not occupy the time of the Council by again going over that matter. Since the draft Bill was last before the Honourable Members of this Council a section has been added to it, for which I am indebted to my friend the Hon'ble Mr. Hobhouse, who has so kindly rendered me his invaluable assistance, without which I could not hope to carry the Bill though its remaining stages. That section has been inserted to meet the objections which were raised in several quarters against the Bill as it originally stood, and as it was circulated for the opinions of the Local Governments and other authorities throughout the country. By the Muhammadan law, any person who has arrived at the age of puberty can make a binding contract of marriage, make himself responsible for the payment of wife's dower and divorce her at will. It was stated in some of the opinions which have been received by the Government on the original draft Bill, that it might have the effect of depriving a Muhammadan, under the age of majority proposed by the Bill, of the rights and powers in matters of marriage, dower and divorce which by his own law he possesses at puberty. It was never intended by the Bill to interfere with the privileges of Muhammadans in these matters; but in order to avoid any possibility of mistake, it is, in the section now added to the Bill, expressly provided that it shall not affect the capacity of any person to act in matters of marriage, dower and divorce. The same provision has been made with regard to adoption, inasmuch as, by the Hindú law, a minor has power to give authority to another to adopt a son to him, and the power of adoption is so intimately connected, in his creed, with the spiritual welfare of a Hindú, that it is most important to guard against the chance of it being supposed that this Bill will in any way curtail the power of Hindús in this respect. The new section goes on expressly to except from the operation of the Act all religious rites and usages of any class of Her Majesty's subjects in India, and with the view of preventing any possible injustice from retrospective action, a clause has been introduced expressly providing that the proposed Act shall not affect the capacity of any person who, before it comes into force, shall have attained majority under the personal law applicable to him.

"The only other point to which I shall now draw the attention of the Council is that of the age of majority proposed by this Bill. The age now

inserted in the Bill was selected in accordance with that named in a series of legislative measures in .this country, such as the Regulations and Acts mentioned in the Statement of Objects and Reasons, and the Succession Act, the Divorce Act, the Limitation Act, and Act III of 1872. But it has been urged in some of the most influential opinions received on this Bill by the Government that the age of majority should be placed at the end the twentieth, or the commencement of the twenty-first, year, instead of at the completion of the eighteenth year. His Honour the late Lieutenant-Governor of Bengal, the Hon'ble Mr. Beaufort, the Commissioners of the Rajsháhai and Patna Divisions, and the Hindú and Muhammadan gentlemen whom they consulted, were all of this opinion. The late Mr. Justice Dwárkanáth Mitra writes on this matter as follows :—

"'I entirely approve of the general policy of the measure referred to therein. That the law of minority, as at present administered in this country, is in a state of great confusion and uncertainty, has, I think, been fully shown in the Statement of Objects and Reasons annexed to the Bill under consideration, and I entirely concur with its hon'ble mover in thinking that legislative interference is absolutely necessary to remedy the evil. The advantages derivable from a uniform law of minority applicable to all classes of Her Majesty's subjects in India, appear to me to be too obvious to require much comment. Such a law, while serving as a short, simple and safe guide to the public, would at the same time save our Courts of Justice from the necessity of trying those complicated and obscure questions, both of fact and law, which they are often called upon to determine in dealing with questions of minority.

* * * * * *

With reference to the detailed provisions of the Bill, however, I beg to state that the limit of minority proposed therein appears to me to be too low. Under the rules now in force in our Universities no student can possibly finish his academical career before the completion of his twentieth year, and it would in my opinion be extremely undesirable to fix the age of majority at an earlier period. I know of several cases in which the education of minors under the Court of Wards has been seriously interfered with, in consequence of the age of majority being fixed at 18, and I beg to add that, notwithstanding all that has been said about the precocity of Indian youths, I am by no means prepared to concede that the majority of them can be safely left to act for themselves at that early age. Then, again, in the case of European British subjects domiciled in India, the age of majority, as at present recognised by our Courts of Justice, is, I apprehend, 21 years, and I do not think it desirable or prudent to reduce that age at once by a period of three years. For the above reasons I would recommend that the limit of minority proposed in the third section of the Bill be raised to the completion of the twentieth year.'

"I am inclined to think that this most able Judge must have overlooked the effect of the definition of 'minor' in the Indian Succession Act; but I feel that this matter, as well as the particular year to be fixed as the date of majority, I ought to leave entirely to the judgment and experience of the Council; and

I now mention the point merely to obtain the views upon it of any of the hon'ble members who may be pleased to express them. I now have the honour, my Lord, to move that this Bill be referred to a Select Committee with instructions to report in six months."

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE had nothing to say against the principle of the Bill. It had his entire support. The law which regulated majority in this country was in a very confused state, and therefore he thought that some such measure as that which had been introduced by His Highness the Mahárájá of Vizianagram would no doubt produce a salutary effect. As to the details, he observed that in section 3 it was declared that, subject as aforesaid, every person domiciled in British India should be deemed to have attained his age of majority when he had completed the age of eighteen, and not before. To that he objected. Eighteen years in this country was not a sufficient age for a young man to take possession of his estate, and administer it successfully against the machinations and wickedness of the ámla who surrounded him. The age of eighteen was more suited to a schoolboy than to a young man taking possession of his father's estate. Under these circumstances, he would suggest that when the Bill was referred to a Select Committee they should consider whether the age of majority should be declared to be the age which was stated in this Bill. All limitation of age was arbitrary, that ought to be fixed as the age of majority, which would serve the best interests of society. In his opinion 21 years was that age. He had conversed with many educated Natives, and they were all in favour of the age of majority being fixed at twenty-one instead of eighteen. It was true that the Government, in 1793, in order to mitigate the evils of a too early age of majority, had fixed it at eighteen. But his experience of more than fifty years enabled him to say that that attempt had not remedied those evils. He had also conversed with many zamíndárs and men who were connected with the management of landed property, and they all seemed to be in favour of limiting the age to twenty-one. The late Hon'ble Prasanna Kumára Tagore by his will provided that his executors should not pay the legacies left by him to his grandsons until they had attained the age of twenty-one. So did the late Bábu Ramáparsád Rai. He (the speaker) had been told that he had made a provision in his will that his sons should not inherit until the youngest of them attained that age; so that the eldest of them must at that time have been of a greater age. This was the feeling of the educated and thinking portion of the Native community, and as for the Hindú law he did not see, as far as his knowledge went, that there was any thing in the Hindú çástras which would militate against the age of twenty-one, should the Committee

think proper to adopt it. Manu, no doubt, in his fourth chapter, first verse said that, in the first period of his age, a man should read and acquire knowledge; afterwards he should marry and enter into domestic arrangements. That showed that Manu was more in favour of a higher age than what was prescribed by this Bill. Twenty-five years of age was his limit of minority. People then and even now in some cases lived a hundred years. Taking all these circumstances into consideration, he hoped that when this Bill was referred to a Select Committee, they would do ample justice to the Hindús, who were so anxious to have this anomaly removed from the Statute-book.

The Hon'ble MR. HOBHOUSE said—"As this is the proper occasion for discussing the principle of a measure before this Council, I wish to state my reasons for supporting the Mahárájá's motion to send his Bill into Committee. Indeed, on a measure of this kind, affecting as it does the social status of the whole youth of India, it would under any circumstances be desirable to have a close examination of the principles on which it rests before going into Committee. It is especially desirable in this instance, because in some very influential quarters objections—I will not say to this measure, but to a measure on this subject—have been expressed. The first proposal of my hon'ble friend the Mahárájá was at his desire sent round to Local Governments and authorities for an expression of opinion, and that course has occasioned an unusual amount of discussion before the introduction of the Bill. I must say that since I have been in this country I have not witnessed so general a consent on any topic resembling this—a topic which concerns everybody, with which everybody is familiar, the practical bearings of which are before everybody's eyes, on which everybody has or can easily form an opinion. There is at present expressed a great preponderance of opinion in favour of making the age of majority higher than it now is. There is not however unanimity. And these things are not to be decided by numbering opinions, but by the reasons alleged for or against the measure.

"One very important authority objecting to the proposal sent to them is, or was, the Government of the North-Western Provinces, to whose objection indeed the Mahárájá referred in his opening speech on moving for leave to introduce the Bill. Sir William Muir's language is as follows:—

"'The Board have grave doubts of the policy of the measure, because the present age of minority among both Hindús and Muhammadans has a quasi religious sanction. They also fear that a great many rulings relating to marriage, divorce, dower, &c., might be disturbed by the introduction of the proposed period. The Lieutenant-Governor is of opinion that there is much weight in the Board's objections, and would support them the more strongly as His

Honour has never heard of any serious practical inconvenience or difficulty from the existing state of the law.'

"Now, if Sir William Muir had had the advantage which I have had of perusing statemnts sent in from a number of different parts of India, he would, I think, be of opinion that there is overwhelming evidence of inconvenience in the law; not only the inconvenience principally dwelt on in the Statement of Objects and Reasons and stated on the last occasion here, namely, a legal inconvenience owing to doubts and anomalies, but inconvenience of a much more important kind—a social and political inconvenience, because lads are left to take care of themselves at too early an age. The Board of Revenue rested their opinion on the inexpediency of interfering with such matters as marriage, divorce, dower and religious customs. Well, in the present Bill my hon'ble friend has taken care to steer clear of all those objections. The second section proposes to except marriage, divorce, dower, adoption and the religion and religious rites and usages of any class of Her Majesty's subjects in India. Those exceptions did not appear in the draft proposal submitted to the Government of the North-Western Provinces. I therefore conclude—of course I do not know—that the high officers who objected to the first and unmodified proposal would not object to the present modified one.

"There is another body who objected to the first proposal on grounds of which some remain unremoved by the subsequent modifications. And I propose to consider what they say in some detail, because, excepting those I have just dealt with, they are the only objections to be found in these papers which rest on detailed grounds.

"The Muhammadan Literary Society have embodied their opinions in the shape of a letter to the Secretary of the Bengal Government signed by my learned friend the Maulaví Abdul Latíf. In that letter they first state what the Muhammadan Law is, that is to say, that majority is attained at the age of fifteen years, or at the age of puberty if that occurs earlier. Then they observe—

"'It will thus be seen that the enactment of the Bill in its present form would, the Committee respectfully submit, amount to a direct interference with the law of Islam which, as far as Muhammadans are concerned, has always been respected by the British Government.'

"Now, that the law of Islam has always been respected by the British Government is true, and true in the highest and broadest sense. If, however, it is meant to infer that the British Government did not think themselves at liberty to pass laws affecting the Muhammadan community, that is not true. It

is not true in regard to this very subject-matter. To show how untrue it is, I will take the liberty of referring at length to a Regulation passed in the year 1793. The preamble of the twenty-sixth Regulation of that year runs as follows:—

"'By the original rules for the decennial settlement of the three provinces, minors were declared disqualified for the management of their estates, and according to the rules for the establishment and guidance of the Court of Wards, passed on the 15th July 1791, and re-enacted with modifications by Regulation X. 1793, the minority of proprietors of land is limited to the expiration of the fifteenth year. In fixing this period, Government were guided solely by legal considerations, the Muhammadan and Hindú laws, although they prescribe no specific age for the termination of minority, indirectly pointing out the fifteenth year as the time when persons are to be considered competent to the management of their affairs. Instances, however, have recently occurred, that evince the inexpediency of vesting proprietors with the charge of their lands at this early period; and general principles, which have their foundation in human nature, justify the conclusion that the same effects would result in similar cases that might hereafter occur, were the cause allowed to exist. At this early age, the proprietors must necessarily be unacquainted with the laws and regulations which they are bound to observe in the management of their estates, and their understanding cannot be sufficiently matured to render them sensible that their welfare depends upon their making the acquirement of this knowledge the chief object of their pursuit. Emancipated from the control of their guardians, and with their property at their disposal, they abandon themselves to those pleasures to which their youth naturally inclines them; the management of their estates consequently devolves to favourites or dependants, who are interested in confirming them in habits of dissipation, until they have lost both the capacity and inclination to assume the direction of their own affairs. But the pernicious consequences resulting from the incapacity of the proprietors are not confined to themselves. The cultivators of the soil, and the various orders of people residing upon their lands, suffer equally by the rapacity and mismanagement of their agents, the payment of the public revenue is withheld, and the improvement of the country retarded. It is therefore incumbent on Government, as well with a view to the future welfare of the proprietors of land in general, as to protect the country from the frequent shocks to which it would necessarily be liable from their want of education and early corruption of morals, to extend the term of their minority to an age by which, with due attention on the part of their guardians, they may be rendered qualified for the management of their estates'

"Then the Regulation rescinds the rule which limited the minority of Hindú and Muhammadan proprietors of estates paying revenue to Government, and declares that the minority of such proprietors shall extend to the end of the eighteenth year.

"Now, I will ask whether there is any trace in that Regulation of the idea that the law of Islam is, in such a matter as this, a sacred thing which the Government is bound to keep its hands off. The law-giver, having deter-

mined that the existing practice is not expedient, proceeds to alter it as he would alter any other practice. He shows that it is not consistent with the public welfare, or with the welfare of the individual owners of property. And he obviously does not feel himself bound to enter upon any other consideration. No doubt the Regulation applies only to those persons who happen to have estates paying revenue to Government. But so far as regards the law of Islam, the principle is precisely the same, whether the Regulation applies to many or to few. It is in principle just as much an encroachment on the Muhammadan law as the encroachment contemplated by this Bill; and each must be defended and may well be defended by the plea that it is for the universal good.

"Well, that law of 1793 was extended to Madras in the year 1804, and such was the law in those two Presidencies down to the present day.

"In the year 1858 the legislature went a great deal farther. They then passed Act XL of 1858 for the Presidency of Bengal. That Act is not prefaced by an account of the motives which actuated the Government, because it was not the fashion of the day; but we may fairly assume that the motives of 1858 were the same as the motives of 1793. The Act applies to everybody who is not either under the Court of Wards or an European British subject. It provides that the care of the persons and property of all minors shall be subject to the jurisdiction of the Civil Courts. It provides a machinery by which that jurisdiction may be put in motion and brought to bear on the person and property of minors. And it declares that, for the purposes of the Act, every person shall be held to be a minor who has not attained the age of eighteen years. Now it is true that, practicably speaking, such enactments as these operate only on those who have some property which may set the machinery in motion. But, legally speaking, and in point of principle, that Act affected every Hindú and Muhammadan in Bengal, except those who are already brought under a similar law by the Regulation of 1793. There is not one who is not either already by law, or who may not become by a simple proceeding in Court, subject to tutelage up to the age of eighteen. And that law of 1858 was extended to Bombay in the year 1864.

"When, therefore, we come to examine the statement of the Literary Society about the law of Islam, we find that though it is quite true in terms, it is either irrelevant or not true when applied to the subject-matter before us.

"The Society proceed thus—

"'In a secular point of view, if the proposed law were made applicable to Muhammadans, then it would happen that an individual of either sect who, by either of the conditions specified

in paragraph 3 of this letter, has reached majority, would be incompetent to exercise the legal functions of proprietorship with respect to his property. He would be precluded from discharging any of those acts of a free agent in which the qualification necessary was that of having attained the age of majority—such as effecting sales, entering into co-partnership and carrying on various sorts of trade—although, according to his own law, he would be of age and fully competent in these matters.'

"Those are exactly the matters with which it is proposed to interfere; they are interfered with by the enactments I have quoted; it is with regard to them that the question arises whether a lad is competent at the very early age at which the Muhammadan law makes him competent. A written law may be contrary to the law of nature; and when that is the question, as it is here, it is no answer to say that the law is as it is. Surely nobody can contend that it is not the function of the legislature to determine what shall be the age of majority for purposes which those gentlemen themselves describe as secular purposes. If it is found that for these purposes the present age is too tender an age, then surely it is both the function and the duty of the legislature to attempt to remedy that state of things.

"The rest of the letter, for the greater part, relates to such matters as Marriage, Divorce, and so forth; and I do not go into that, because, in the main, I agree with the Society on these points, and the Bill as now framed avoids them.

"But there is one passage which strikes at the Bill in its present shape, and indeed at any other conceivable Bill or enactment. The Society say—

"'In a religious aspect, the encroachments of the enactment now before the supreme legislature, upon the established ordinances of Muhammadanism, would be just as radical. A Muhammadan who, by his or her own law, has reached majority, is bound to fulfil certain religious functions, too numerous to detail, all of which require for their fulfilment the payment of money. But the payment of money inplies the possession of property, which is not entrusted to him, and is not controllable by him, so long as he remains a minor under the proposed law.'

"That, indeed, strikes at the root of all minority, and I think my learned friend, the Maulaví, did not do justice to his own good understanding when he put his name to such an argument as that. Must not a minor eat and drink? Must he not have raiment and where to lay his head? Ought he not to be educated? And how are these things paid for? We all know that, supposing the minor possesses the means, there is not the slightest difficulty in making them available. Well, then, the same machinery which provides other things which are necessary and proper, will also provide for such religious functions

as it is proper for a minor to perform. Now, having, as I conceive, answered the arguments contained in this letter, I proceed to consider how far, as a matter of sentiment and opinion, its writers, represent what their fellow-countrymen are thinking. And judging by the papers sent in to the Government, my opinion is that they do not represent their fellow-countrymen at all closely.

"First I turn to what the British Indian Association have said. They contend for an extension of minority to the age, not of eighteen but of twenty-one years, as my hon'ble friend, the Rájá Ramánáth Tagore, has contended to-day. They place the duties of the legislature in a perfectly correct light. They say,—

"'The limitation of minority is a civil function exercised by the legislature, and the paramount consideration in discharging that function ought to be to see that the person who is declared by law, on the attainment of a certain age, competent to exercise rights of property, acquires at that age sufficient discretion, judgment and self-reliance, in all human probability, to take care of his own interests, and to perform his part as a citizen.'

"Then, after some argument in favour of the Mahárájá's proposal, they make the following important remark:—

"'In not a few instances, the Committee may remark, have the public anticipated the action of the legislature. In Calcutta, where the minority of Hindús is held to terminate with the fifteenth year, Hindú gentlemen of property now-a-days evince a disinclination to leave their heirs absolute masters of it at such an early age, and there are instances of their making wills by which they extend the age to the end of the eighteenth and twenty-first year.'

"That is a practice of which my hon'ble friend Rájá Ramánáth Tagore has given us an instance to-day, and very important it is. I feel strongly that, on a subject of this kind, a law is not likely to be successful unless it accords with public sentiment which it should try rather to follow than to lead. But this practice of the Hindú community—and I shall show presently that it extends to Muhammadans also—proves that the present proposal is not a crotchet born in the brain of the Mahárájá, but is a true expression of the wishes entertained by the most educated and intelligent men; wishes which they are now driven to gratify by using the imperfect machinery afforded by the law, so as to create an artificial minority beyond the legal limit, under the provisions of wills or trust-deeds. Those wishes are legitimate and wise ones, and it will in my judgment be proper to meet them by prolonging minority to a reasonable extent. Again, I find that Mr. Molony, Commissioner of Rájshahái, says that a meeting of Muhammadan gentlemen was held on this

matter at Rangpur, and that the only objection put forward was with regard to marriage. They said it would be very inconvenient if marriage-contracts, dower, divorce, &c., should be invalid when made by parties under the proposed age of eighteen years. That objection has now been done away with, and I presume that these gentlemen of Rangpur will be in favour of the Bill.

"Mr. Bayley, Commissioner of Patna, says that all the European and Native gentlemen whom he consulted thought the age of majority should be twenty-one. One of them, a Muhammadan gentleman, the Maulaví Dalíl ul-dín wrote thus:—

"'In the case of Muhammadans, the proposed limit will not interfere with any religious custom except marriage. A Muhammadan under sixteen years of age can marry only through his lawful (according to the Muhammadan law and not one appointed by the Court) guardian, but above that age he must himself be the contracting party even if he has a guardian. But according to the proposed Bill a marriage contracted by a Muhammadan of sixteen years of age—and such marriages are very frequent—will be illegal. I would therefore propose an exception in the case of Muhammadan marriages, which should be left to be governed by the Muhammadan law.'

"The wished for exception has now been made.

"From Madras we have had more evidence, and I will first read some important statements made by the Hon'ble V. Rámayyangár a member of the Madras Legislative Council. Confining his remarks to Hindús, he said—

"'In my remarks I shall confine myself to the measure as it affects Hindús. The Bill, then, does not, in my opinion, go far enough. We have long outgrown the state of society to which the Hindú law of majority may have been applicable. The framers of the Regulation constituting the Court of Wards evidently felt this, and properly went a step further than the Hindú law and raised the limit of minority, though only for the purposes of that Regulation, from 16 to 18. I think this limit is still low. Admitting all that is said regarding the precociousness of the Hindú, I am convinced from daily observation and experience that a vast injury is inflicted on individual families and on society at large by the present state of the law on the subject of majority. Eighteen, *a fortiori* 16, is not an age at which the character of a young man, however precocious, may be said to be formed; on the contrary, it is the period of life at which it begins to form, when the faculties are hardly matured, and when his education (that is, where he is subjected to the influence of a proper education) is far from complete.

"'I was at one time officially connected with the management of several valuable landed estates in Tanjore which were under the Court of Wards. The young wards used to be sent to the Government school at Combaconum, though much against their own will and that of their guardians and relatives. As is generally the case with this class of people, their education commenced late; they had to unlearn at school much of what they had been taught at

home, and they had to be weaned from evil influences to which they had been subjected from their infancy. At 18, by dint of pushing and hammering, they had commenced to learn something useful; but at the end of that year they had reached their legal majority, and received charge of their estates in the best possible condition, with large accumulated funds invested in Government securities. But they soon went through the latter. Such of them as are now alive are not worth an anna in ready cash, but, on the contrary, are involved in debt, and their estates are neglected and perhaps encumbered. These are only samples of what are daily occuring in every other district of the Presidency.

"'But in the Presidency town, within the High Court limits, the case is much worse. Here, the Court of Wards' Regulation has, of course, no operation, and the Hindú law, under which majority is reached at 16, applies in all cases. Were it necessary, I could mention scores of cases of young lads coming into the possession of property and entering on the responsibilities of life at this extremely early age of 16, dissipating and ruining that property and utterly ignoring those responsibilities, playing into the hands of designing men, leading a life of voluptuousness and vice, and sinking into a premature grave. But it will suffice to refer to one case which at this moment is regarded as a grievance throughout the more intelligent portion of Hindú society in Madras. The property of one of our oldest and wealthiest families is now in the hands of a Receiver appointed by the High Court. The young heir is a boy of, I believe, 15. He is a spoilt child in every way. His education has been, and is being, neglected. His guardian has been good enough to see him married already, and provided with everything except books and a teacher. The boy and his companions are most anxiously looking forward to the completion of his sixteenth year, and next year or so he must, as matters now stand, receive charge of his property, which is worth many lakhs of rupees. The result of this it is not difficult to foresee. It will be what it has been in scores of other cases. I cannot imagine that it can be for the interest of a boy of 16, or his companions, his family or of society at large, that at 16 years of age he should be placed in possession of extensive landed and personal property, of the duties and obligations attaching to which he cannot have the least conception, which he cannot possibly know how to manage, but which he is sure to abuse and dissipate.'

"Next I come to the evidence of a Muhammadan gentleman, the Hon'ble Mír Humáyun Jah Bahádur, who makes an important statement as to the practice of Muhammadans of property. He says—

"'As Muhammadans, with others, have been subjected to the provisions of the Regulations and Acts named in the second paragraph of this memorandum without any inconvenience, hardship, or dissatisfaction, there cannot now be any objection to the proposed measure on their part, more especially when it is calculated to promote the happiness of people in their life by endeavouring to keep them away from all the risks of too early a start in life; in fact, the Muhammadans of Asia, when leaving a minor behind them, have very often exceeded the terms of their own law by declaring in their will that their successor should not take charge of the property left by them from the hands of guardians or protectors until after attaining the age of 18 years, and these testators have not been blamed by any one, neither has any law ever interfered with their arrangements for making such stipulations in their testaments. Such

privileges are maintained in practice, not being prohibited by any especial or general terms of the Muhammadan law. The extent of minority limited to the end of the sixteenth year is held for religious obligations and observance of its rites.'

"I pause a moment for the purpose of calling the attention of the Council again to the evidence here supplied that the Bill is not outrunning but following the sentiments of intelligent Muhammadans, and also that, notwithstanding the fears of the Literary Association, there is no difficulty found in extending the term of minority beyond the age at which it is proper to perform religious duties and rites. The same gentleman continues—

"'The introduction of such a legislative measure as the one I am now called upon to give my opinion upon has become an actual necessity, and in arriving at this conclusion I am strengthened by the reports of several minor cases decided from time to time in our superior Courts, and the remarks expressed by the learned Judges as to the incompetency of the young men taking charge of their estates at an age when they scarcely can exercise their judgment as to the preservation and better management of their estates, and the inevitable consequence of this has been, except in few cases, very disastrous.'

"One of the Madras Police Magistrates, Mr. P. Srínivása Rau, who thinks that the age of majority should be the completion of the eighteenth year, has taken the pains to enquire the age at which candidates come up for the matriculation examination in the Madras Presidency. His account of the years 1871 and 1872 may be roughly epitomized as follows: The number of candidates under fifteen years of age is five per cent. of the whole; between fifteen and sixteen, nine per cent.; between sixteen and eighteen, thirty per cent., and above eighteen, fifty-five per cent. We thus have light thrown upon the question from another side of Native practices. In the important matter of education, those who are in a position to send their sons up for matriculation keep the majority of them in schools, or *in statu pupillari*, till beyond the age of eighteen, and only a small fraction are sent up so early as the age of sixteen.

"I will quote yet one more bit of evidence, because it shows again another practice by which Native, at all events Hindú, families evince themselves that the legal age of majority is too low. Mr. T. Mutusvámi Ayyar, Judge of the Madras Court of Small Causes, says:—

"'In the case of Hindús and Muhammadans the present limit of minority in Southern India, which is the end of the sixteen year, is certainly too low. At this period of life young men are not quite equal to the responsibilities which the management of property entails on them, or to protecting their interests in the contracts they enter into with third parties. Practically, they are under the control of elderly relations in respectable Hindú families, and,

where such is not the case, the property entrusted to them is found more to suffer than to improve by their management during the first few years.'

"The result of my examination of these papers is to convince me that the objections of the Literary Society, so far as they apply to the present measure, are not only weak in argument, but are at variance with the sentiments of Native communities. We are not left only to the opinions and arguments of those who desire a change of the law, though those alone are calculated to carry conviction with them. We have that evidence which in such matters is the most satisfactory of all; evidence that in the conduct of their private and family affairs, a number of persons are already doing their best to make a law for themselves which they deem more beneficial than the law at present laid down for them.

"Now Hon'ble Members will no doubt have observed that most of the gentlemen I have quoted desire to make the age of twenty-one the age of majority, and they may ask me why I support a Bill which fixes it at the age of eighteen. It is true that the point may be called one of detail, as my Hon'ble friend Rájá Ramánáth Tagore has treated it, but it is a detail of such extreme importance as hardly to be separable from the principle of the Bill. The Select Committee may on sufficient evidence alter the Bill on this point. But though the Bill is not my Bill and is not a Government Bill, and I am not responsible for its contents at this stage, I am supporting it, and will therefore assign my reasons for thinking that the age of eighteen is the better one to adopt.

"First, we must remember that the present age is, apart from the operation of statutes, a great deal below eighteen: among one large class it is sixteen; among another large class it is fifteen; among a third large class it is either fifteen, or some earlier age at which puberty may be attained. From any of those ages to eighteen is a considerable jump; and if we jump at once to twenty-one, the reform would assume the character of a violent change. The change seems to me more likely to work well if of a more prudent and gradual character.

"Again, of those who have furnished us with opinions and arguments, no one wishes to put the age below eighteen, but many would not put it so high as twenty-one.

"Moreover, by adhering to the age of eighteen we are proceeding on the lines laid down by our predecessors. In the legislation of 1793, in that of 1804, in that of 1858, and in that of 1864, the age of eighteen was selected as the

best age of majority. We must suppose that the selection was made on the best evidence procurable, and that it represents the deliberate judgment of four different Governments as applied to the circumstances of their time. The same thing was done in the year 1865 for a different class of our fellow-subjects. In that year the Succession Act was passed, and the principal class affected by it is the class of European British subjects. In their case, for all purposes of succession, for all dealings with property taken by way of succession, the age of majority has been fixed at the completion of the eighteenth year.

"On these grounds, therefore; that it is more prudent and less abrupt; that it is supported by the opinions of all those who desire reform at all; that it is in accord with the views of former Governments on the same point; and that it starts from and fits into a large basis of existing facts, I think, as at present advised, that it is wiser to adhere to the age of eighteen instead of taking a new starting point.

"The point on which I do feel doubt is the treatment of European British subjects, whether it is advisable to bring down to eighteen their present age of majority, which, except in matters of succession, now stands at twenty-one.

"There are, however, strong reasons for doing so. The topic of uniformity is one which I by no means wish to ride to death. There are other things better than uniformity. But here there is a very strong case for an uniform law. In the first place there is the law of 1865. As regards a large and important part of their affairs. European British subjects are already *sui juris* at eighteen. Again, the physical line dividing a large number of European British subjects from Native Indians is a very narrow one. The distinction must often be imperceptible till enquiry is made and evidence taken. Many contracts may be made with a young man in the belief that he is a Native Indian subject and of age, and may be invalidated by proof that he is an European British subject and a minor. That must lead to much confusion and disputing. As the law now stands, we cannot possibly assimilate European British Subjects to their neighbours who fall under so many different laws. But if we set up a uniform law for their neighbours, it becomes practicable to do it for European British subjects also. And as we have already, without mischief so far as I know, fixed the age of eighteen for them in one department of their lives, I think we are justified in fixing the same in other departments also.

"I have now assigned my reasons for approving the principle of this Bill. I have hardly touched, except in my observations on the last point, on the purely legal reasons for it. Those have been fully set forth in the Statement of

Objects and Reasons and in my Hon'ble friend the Maháráját's speech on the last occasion, in which I intimated a general concurrence from my professional point of view. Today I have dwelt on the far more important class of considerations which relate to the essence of the question—what on social and political grounds is the better law. I think the Bill may be improved. I think we may improve the preamble by resting the change of law, not only on our desire to attain uniformity, but on our faith that we are substituting a better law for a worse one. I do not see why we should be less bold in this respect than our ancestors were. Perhaps we may improve it with respect to contracts made and to be performed in India. Such matters are not beyond the competence of a Select Committee, and I beg to support the motion of my Hon'ble friend that the Bill be referred to such a Committee."

The Motion was put and agreed to.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM moved that the Bill be published in the local Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to establish a uniform age of majority for persons domiciled in British India. The Hon'ble Messrs. Ellis, Hobhouse and Bayley and the Hon'ble Rájá Ramánáth Tagore and the Mover.

The Council then adjourned *sine die*.

CALCUTTA,
The 5th May 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt. Govt. Printing.—No. 64 L. D.—12-5-74.—330

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 23rd June 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble Rajá Ramánáth Tagore.

CIVIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE in moving for leave to introduce a Bill to amend the law relating to Civil Appeals in the Presidency of Fort William said:—

"The main objects of the measure which I desire to introduce are these:—to place some check on the great latitude of appeal which is allowed in this country, and at the same time to provide for the more efficient hearing of such cases as are proper subjects of appeal to the High Court. It is confined to Bengal, because it is in that province that the mischief of the present system is chiefly felt. It originated in a Minute written by the Chief Justice of Calcutta, in which he set forth the very unsatisfactory nature of the arrangements regulating those appeals which are known as special appeals. Upon consideration of that Minute, the Government framed some proposals which they sent round to the various local authorities. The measure now proposed has been framed after consideration of a number of opinions thus elicited. To some extent, it deals with appeals generally, but it is principally concerned with those which are called special appeals. And as the matter is important and not free from complication, and as a great many minds have been addressed to it and have given conflicting opinions on it, I must ask for the indulgence of the Council if I detain them some time on what I fear is an exceedingly dry subject, while I attempt to make clear what is the nature of the Bill, and what are the reasons of the Government for promoting it.

"In order to give the Council a clear idea of what I am asking them to do, it will be necessary first to show what the present condition of things is, and how it came about; the more so, because the term 'special appeals' is, in its present application, a misleading one, and describes that which used to be, rather than that which is. I have heard the present plan commonly described as a plan for abolishing special appeals; but if words had their proper meaning, it would be more correctly described as a plan for restoring special appeals.

"Well, before the year 1793, there was no appeal at all from the Mofussil or Zila Courts, except to the Governor General and Council in their character of Sadr Díwání Adálat, and that appeal was not allowed unless the matter in dispute was worth more than a thousand rupees. In the year 1793, Provincial Courts of Appeal were established, and these appeals lay from the Zila Courts, which were the Courts of First Instance, to the Provincial Courts in every case, and a second appeal lay to the Sadr Díwání Adálat in cases over one thousand rupees in value.

"Shortly afterwards, Courts were established under the Zila Courts and with limited pecuniary jurisdiction: appeals lay from them to the Zila Courts in all cases, and then there was no further appeal.

"But it was soon found that cases differed in quality as well as in value, and that second appeals from the Zila Courts were wanted in many cases where the stake was below the pecuniary limit. The want was met by Regulation XLIX of 1803, the material portion of which is as follows:—

"'Suits tried in the first instance by the Native commissioners, or by the registers of the zillah and city courts, and heard in appeal by the judges of those courts, may also occasionally involve questions of a general and important nature; particularly in causes between landholders or farmers of land, and the ryots, for arrears or exactions of rent, wherein the rights of the landlord and tenant may be at issue; and an erroneous decision not revocable by appeal, might be of serious ill consequence. It is therefore hereby provided, that in all cases wherein a regular appeal may not lie to the provincial courts of appeal from the decrees of the judges of the zillah and city courts, under the present or any other regulation, it shall be competent to the provincial court to admit a special appeal, (on performance of the general conditions of appeals,) if on the face of the decree of the zillah or city judge, or from any information before the provincial court, it shall appear to them erroneous or unjust; or if, from the nature of the cause, as stated in the decree, or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal.'

In the year 1805, a similar power was given to the Sadr Díwání Adálat.

"That is the origin of special appeals. And the Council will observe that the appeals really were special appeals, that is to say, appeals not lying as of right or

in the option of the parties, but in the discretion of the Court, and granted only on account of something special in the case. And when they were granted, the whole case was open to the Court of Appeal; there was no distinction between the facts and the law, or anything to prevent the Court of Appeal from doing what appeared to it to be justice.

"I pass over the modifications of this system which were made from time to time; substantially the system remained till the year 1843, when a radical change was introduced. By Act III of 1843 it was provided that appeals should lie to the Courts of Sadr Díwání Adálat

"'from all decisions passed on regular appeals in the Civil Courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the Courts, or shall involve some question of law, usage or practice, upon which there may be a reasonable doubt.'

"That enactment effected the abolition of special appeals properly so called. The discretion of the Courts was taken away; it was not required that the case should possess any special features; any case, however trivial or trumpery, might at the option of the beaten party be the subject of a second appeal upon any point of law or practice; and no case, however important, could be the subject of a second appeal if it turned on facts alone. From that moment the second appeal, though called special, was every whit as regular as the first appeal, to which the name of regular has been applied.

"Again I pass over the modifications of the system of 1843; it is substantially the system of the present day, and is expressed in section 372 of the Civil Procedure Code, which I will read—

* * * "'a special appeal shall lie to the Sadr Court from *all* decisions passed in regular appeal by the Courts subordinate to the Sadr court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.'

"The Council, however, must not imagine that such appeals lie in every class of case; for large classes of cases have been excepted from their operation. The Courts of Small Causes have a jurisdiction over certain classes of suits up to the value of one thousand rupees. Those suits may be roughly described as suits for mere money demands. And from the Small Cause Courts there is no appeal at all. The only proceeding in the nature of an appeal is a reference of points of law to the High Court, which the Small Cause Court *may* make in any case, but is not bound to make, however much the parties may wish

it, unless the value of the suit exceeds five hundred rupees. Again it is provided that, in suits of the Small Cause type decided by the ordinary Courts, there shall be no second appeal if the value of the suit does not exceed five hundred rupees. Instead of it, there is given the same power of reference to the High Court which the Small Cause Courts have.

"I do not know that I need state with much particularity the nature of the judicial system which works the system of appeal I have sketched, because we are not proposing to alter it. It is sufficient to say that a decision by a Munsif may always be appealed to a Subordinate or a District Judge, and an original decision by a Subordinate Judge to a District Judge, and that all second appeals lie to the High Court.

"To state it briefly, the system of appeal is as follows:—Every decision of a Court of original jurisdiction, except a Small Cause Court, may be the subject of one appeal. That appeal opens the whole case. Every appellate decision may be the subject of a second appeal, except in cases which are of the Small Cause type and whose value does not exceed five hundred rupees, and except decisions passed by the High Court. The second appeal does not open the whole case. The High Court is bound by the conclusions of the Appellate Court below it on all questions of fact, however strongly it may think that there has been error. If, however, it can trace the error to some erroneous legal principle, it may remand the case for a rehearing; and that is a course very frequently taken.

"It is under this state of things that the Minute of Sir R. Couch has been written. He dwells principally on the highly unsatisfactory nature of an appeal in which the Court is not at liberty to go into the whole case. What he says would come with great authority if it stood alone; but in fact it accords with many other opinions on the same subject, which of late years have reached the Government of India, and some of which will be found stated and commented on in Mr. Stephen's great Minute on the Administration of Justice. I will try to state briefly the bad consequences which the existing system is found to produce.

"First, we are told that the body of Munsifs has for some years past been improving in education and judicial ability, and that many of them are quite as competent to decide questions of fact as many Subordinate or District Judges. Moreover, the Munsif sees the living witnesses, whereas the Court of Appeal sees only the dead record. Doubtless, in one way every Judge of Appeal has an advantage over the Judge of first instance; cases are more

licked into shape when they reach him; they are better argued before him; the attention is more concentrated on the material points. But taking all things into consideration, the chances are that the Munsif's judgment on questions of fact is as likely to be right as that of the Court above; yet the Court above can reverse it, and over that reversal the High Court has no direct power. This is of itself a mischief, which ramifies into other mischiefs.

"One of these secondary mischiefs is the great number of hopeless and frivolous appeals brought before the High Court merely to be dismissed. The real hope of the parties is that the High Court will be so struck with the hardship done by a reversal of the Munsif's judgment, that it will find a way to interfere. But the appeal will only lie on some question of law or practice: so all the pleader's ingenuity is set to work to ferret out some question of that kind on which he can hang his appeal. The waste of time and money thus caused is considerable.

"Another secondary mischief is that strained and unnatural interpretations are put upon the law. It is not in human nature to see glaring error and injustice without striving to remedy it. The maxim that 'hard cases make bad law' is well known; and if that is so under a system which leaves the whole case open to the Court, what must it be under a system which precludes the Court from entering on the most material parts of a case? In point of fact, the Judges are placed under strong temptation to wrest the law to the purposes of justice, and to this temptation, we are told, they sometimes yield.

"But it constantly happens that, wish as they may, they are unable to do what they see to be justice. The legal objection taken to the appellate decree is too weak to stand. So the parties have all the vexation and cost of an appeal which practically decides nothing. And the High Court and the parties who prevailed before the Munsif have the dissatisfaction of feeling certain that he was right, even that he may have been overruled in ignorance or from carelessness, and yet that there is no possibility of restoring his decree.

"Again, when the High Court can disturb the finding of fact as being grounded on some erroneous principle, they cannot do so directly, but only by the clumsy and circuitous process of a remand: a process which remits the case to the same Judge, which may or may not produce the desired results, and which sometimes has to be repeated, and even repeated again.

"I might give the Council some detailed evidence on the point I am now discussing; but really there is found to be so little difference of opinion about

it, that I feel I should be wasting time by dwelling upon it longer. Sir R. Couch proposes that where there is a second appeal, it shall be an effectual one: that is to say, an appeal on the whole case, and on this point there is a very general concurrence of opinion, at least in Bengal.

"There are indeed those, and among them gentlemen of great authority, who tell us that we are doing an idle thing to attempt any improvement of our present system at all, for that we are only putting our superstructure in order, whereas it is our foundations that are rotten. I am sorry that the late Lieutenant-Governor of Bengal does not now occupy that empty chair, for if he were there we should hear that view of the case ably and eloquently set forth. He would abolish the right of appeal *in toto*, and substitute for it some system of inspection and revision. Others tell us that all we can do is nothing, or worse than nothing, unless we improve our Courts of First Instance. Others say that there should be strong Provincial Courts of Appeal; others, on the contrary, that the intermediate Courts of Appeal should be entirely swept away.

"Now, as between appeal on the one hand, and inspection and revision on the other, I have not seen any detailed or even any outlined plan of the latter system. I can therefore only say at present that a well-organized plan of appeal seems to me absolutely necessary for the healthy and efficient administration of justice.

"As to improving the Courts of First Instance, I most cordially agree with those who put it in the very first place of importance. I agree that Judges of first instance are, and must be, the most powerful part of any judicial system, and that, if they are incompetent, no contrivances however ingenious about appeals and, I will add, about inspection, will make our administration of justice otherwise than weak. But how are we to improve them? Improve them by getting better men, says one. Well, we cannot create men to order. We can only get better men by education, by experience, by careful selection. That is being done, but it is the work of time. We are told that there is a marked improvement in the men, and that improvement will doubtless go on, but it is, and must continue to be, slow and gradual, and we must not be impatient about it. Improve them by setting two Judges to sit together, says another. Well, would that plan get the business better done? I know that it would be expensive, and I know that it would consume a great deal more time, for two men cannot get through business as one can, but whether it would be more efficacious, I do not know. I believe it would not, for according

to such experience as I have, judicial work of the first instance is done better by a single Judge than by a plurality of Judges.

"As for the other plans, I have shown the Council to-day that there was a time when there was no intermediate Court of Appeal, and again a time when there were Provincial Courts of Appeal. I do not mean to say that those who would now revert to the principle of past arrangements would revert to it under the same circumstances or with the same machinery. But they propose great changes of a speculative character,—changes on which there are the widest differences of opinion,—changes which, in the year 1871, when the Bengal Civil Courts Act was passed, were thought too great to be attempted without much more consideration and delay, and of which the same may be said now. I think it will be wiser to take the modest measure of reform which this Bill proposes, if we see our way clear to an advantageous outcome from it, than to wait for great organic reforms which may be many years in coming.

"I ought to mention one other general counter-proposal to the plan of the Government, both on account of its importance and on account of the high authority by which it comes recommended. It is that for the correction of error we should place our principal reliance on new trials instead of appeals, and its chief advocate is Mr. Justice Phear.

"Now, in England, a new trial is a most efficient instrument for the correction of error. But then new minds come to the work: there is always a fresh jury, and generally a fresh Judge. In fact, it is considered to be a reason why a Judge should not go the same circuit twice running, that if he does so he may have to conduct new trials ordered in consequence of his own rulings.

"But unless we are to make large changes in our system of Courts, for which as I have said we are not prepared, a new trial in India must involve one of two things—either the parties and their witnesses must go into another district at very serious inconvenience, or the trial must take place before the same Judge. Practically, they would be before the same Judge. I do not believe that new trials by the same Judges will produce much good result. The appeal from Philip drunk to Philip sober was, as we all know, successful; but an appeal from Philip sober to Philip drunk—from a man with an unbiassed mind to the same man prepossessed with an adverse view of the case—is usually a hopeless affair.

"For these reasons, I think we ought to adhere to appeals as the best instrument we are likely to get for correcting error.

"Well, but if all appeals are to open the whole case, the High Court will be overwhelmed with work, unless steps are taken to protect it. Sir R. Couch therefore proposes that there shall be no second appeal when the first appeal results in a confirmation of the judgment of the Court below. And this is the next main object of the Bill.

"I must say that this seems to me the most reasonable of all limitations to place on the right of appeal. All others (and every system has some), whether of time or of subject-matter or of money, are more or less arbitrary. This is founded on the presumption that justice has actually been done. I contend that the State is not bound to find machinery for litigation until all suitors are satisfied. Some never will be satisfied as long as anything they seek is denied them. The State's duty is to provide such reasonable amount of judicial machinery as may satisfy reasonable people that their cases have been fully and fairly heard, even if erroneously decided, so that they may not be driven to take the law into their own hands. When that duty has been discharged, we may apply the maxim, *Expedit reipublicæ ut sit finis litium.* What quantity and quality of judicial power will suffice for the case, must depend upon the nature of the case. But, subject to the qualifications I shall presently mention, I think we may say that when two impartial and independent Judges, one sitting in appeal from the other, are agreed, the presumption arises that justice is not likely to be better served by any further enquiry. The chances are that if a third Court differed from the two first, it would, in other than exceptional cases, be wrong: and it is certain that the then beaten party would be even less satisfied than one who was beaten before two consecutive courts, and was then compelled to stop. I do not further argue the principle, because I find very general approval of it. The only specific argument against it is, that it will have a bad effect on the Subordinate and District Judges. That view appears to have been held by Sir George Campbell, and it finds favour with some others. I will read what is said of it by Mr. Field, who has sent in a very thoughtful and valuable commentary on the proposals of Government, one which I have found of great use, though I cannot always agree in his conclusions. Mr. Field says:—

"'The second of the proposed changes is that no second appeal be allowed, as of right, when the Appellate Court agrees with the court of first instance. I must confess that I share the apprehensions of His Honour the Lieutenant-Governor of Bengal that the tendency of this provision will be to induce a lazy and inefficient Appellate Judge to shirk his duty. With a local Press and a strong public opinion, the danger would be less; but where these do not exist, the proposed change, while it lessens the work of the High Court, will certainly diminish the efficiency of the lower appellate courts. As these latter courts are said to have at present nothing to spare in the way of efficiency, I doubt the propriety of this change.'

"On the other hand, the majority of local authorities think that a Judge is likely to be stimulated to do his duty more carefully by the knowledge that his decision is absolutely final.

"If it were necessary to take a side in this controversy I should side with those who take the more favourable view of human nature. I think, however, that the objection may be met in another way, and that the objectors have not thoroughly realized the position of the intermediate Judge. But before I can explain my meaning, I must unfold the plan further.

"The next proposal for limiting the number of appeals is, that there shall be no second appeal when the value of the suit is under two hundred rupees. This is the subject of great controversy, many authorities urging us to carry the pecuniary limit a great deal higher, and many objecting to the principle altogether. To show what are the objections in principle, I will read to the Council what is said by the Judicial Commissioner of British Burma, who, I think, has put them as fully and forcibly as any one:—

"'I believe the money limitation to be unjust, and founded on a fallacious argument: unjust because it will introduce one law for the rich and another for the poor; because there can be no just reason why the suitor, who is wronged in a matter of what may relatively be considered of small pecuniary value, should be obliged to submit to the judgment of a tribunal which is admitted to be so inferior that it cannot be trusted with the final decision of cases of larger value: and founded on an argument which is fallacious; because it *is* fallacious to compare the value of the property at stake with the amount of public money spent in the machinery of the Court, and having discovered that the latter is the higher, to proclaim the time of the court to be wasted. The test of the value of the time and labour of the Court is, not merely the value of the property in dispute and the benefit which its decision may confer on the successful party, but also the benefit which its decision may confer by declaring disputed points of law, and the still greater benefit which the existence of the Court confers upon the community at large, by affording a peaceful means of settling disputes which otherwise would be settled by violent and lawless means.

"'I would reject altogether the money limitation, and I believe its existence in the Courts of Small Causes not to rest upon defensible grounds.'

"The arguments are substantially four in number:—

1. To make a difference between the rich and the poor is unjust.
2. It is fallacious to weigh the expenditure of public money as against the amount at stake in the suit.
3. A good judicial system should aim at settling the law in a proper way.
4. It should also aim at affording peaceful solutions to quarrels.

"I fear that, with the time at my disposal, I cannot do full justice to these arguments or to the replies to them, but I will briefly show how I think it right to deal with them.

"*First*, I fully admit that to make differences between rich and poor as such, is unjust. But to say that there are or shall be no such differences, and to make our arrangements as if there were none, is to shut our eyes to the plain facts of the world we live in. Suits for small amounts are usually much simpler than suits for great amounts. Suits for small amounts usually concern society at large much less than suits for great amounts. Therefore, a simpler machinery usually suffices to settle suits for small amounts. The circumstance that the parties to suits for small amounts are usually poor, and the parties to suits for great amounts usually rich, ought not to affect the case. The arrangement is made, not on the ground of the wealth of the parties, but on the ground of the magnitude of the stakes.

"*Secondly*, I protest in the name of the non-litigant public against the doctrine that there is to be no comparison between the amount of public money spent and the amount of the private stake. I will just put a case to the Council. My Khidmatgár demands ten rupees of me. I say I only agreed for nine rupees, and pay him nine rupees. He sues me for the odd rupee, and the Munsif gives him a decree. Am I to take that case up to the District Judge, the High Court, and the Privy Council, because I happen to be very angry about it, and am willing to spend money in litigation? Would it not rather be a monstrous abuse of judicial establishments, to say nothing of the hardship on the respondent? Is it not clear that there ought to be some proportion between the value at stake and the judicial power brought to bear upon it? If so, a line must be drawn somewhere, and then the only question is, where it shall be drawn.

"Now, Sir Barnes Peacock entered on some enquiries pretty well known by this time, by which he showed that out of 3,047 special appeals presented in the year 1869, 1,543 were under one hundred rupees in value, and he calculated the expense of each such case to the public alone at from one hundred to one hundred and twenty rupees. He then pointed out that, as regards these 1,543 cases, it would be cheaper to the Government to pay the amount demanded, with the costs of both parties, and to give them a bonus besides for being good enough to abstain from litigation, than it was to try the cases. I should have thought it impossible to contend gravely that such a state of things is right.

"If the argument merely means that the cost ought not to be the sole and conclusive test, it is not addressed to the present measure, for though others may have proposed such a thing, the Government have not.

"But besides the cost to the public, we have to consider the cost to the litigants. Is that to be no element in considering how far we shall provide means for one party to disturb another in the possession of the decree he has got? A great deal of the argument I see in favour of numerous appeals seems to lose sight of the fact that there is such a being as the respondent, who has got a decree, and who may be most grievously harassed by protracted litigation. Sir Barnes Peacock shows that, in the year 1869, 97 cases were decided on special appeal under five rupees in value. The result was 64 affirmations, 22 remands and only 11 alterations of the decree below. He calculates that each successful appellant was at least ten rupees out of pocket by his appeal, and that each successful respondent spent ten rupees in maintaining his decree for something less than five rupees. I hardly understand the doubt, at all events I cannot doubt, that it is for the interest of the parties, even the appellants, to say nothing of respondents, to stop such litigation, if the real value of the suit is anything near the amount of money directly involved in it.

"As to the third argument, I admit it and say that it has entered into the Government plan.

"As regards the fourth argument, I admit its abstract truth, and say that it also has entered into the Government plan. But I do not admit the assumption which underlies it, and which alone makes it relevant in the present controversy. I do not admit that to place pecuniary limits on appeal need have any tendency to excite violence. What people want is, to have their quarrels settled by authority. Simple quarrels are best settled by simple methods. It seems to me an unwarrantable assumption that the defeated party will be tempted to violent courses. The presumption is that he who gets a decree is right, and the fact is so in the great bulk of cases. Even when it is otherwise, a defeated party hardly ever does anything but acquiesce in the judgment of an impartial tribunal which he cannot lawfully dispute. I think this argument loses sight of the essential difference in the position of two men whose quarrel is wholly unsettled, and the position of the same men when one has got a judgment, to say nothing of two independent judgments, in his favour.

"No man can be more ready than I am to admit—nay I insist—that the pecuniary limit is an arbitrary one. It is part of my case that it would

produce a great many hardships if not moderated in some manner. But after all, have we been going wrong on this point ever since we have been in India? Was the ancient pecuniary limit of appeal to the Sadr Díwání Adálat wrong? Is our present and long-standing division of jurisdiction between higher and lower Courts wrong? Is our Small Cause system wrong? Are the Privy Council wrong in insisting on a pecuniary limit? Is the English County Court system wrong? I think there can be but one answer to these questions. The principle is not wrong: it is a rough one, but it is simple, it is intelligible, and it works very smoothly in a vast number of cases.

"If, then, we accept the principle, it will be for the Select Committee to decide at what point the line shall be drawn. I propose two hundred rupees, being, perhaps, something above the cost to the public of a suit involving a second appeal, but considerably below the estimated cost of such a suit to the parties. It is always very difficult to draw a line of this kind, but if opinions go for anything, we have drawn our line at a low level. An able Equity Judge once told me that, when he had to decide questions of valuation, he found that the experts of one side valued very high, and those of the other side very low, and that he could not discover whose opinion was the better one. So he used to add up all the values and divide the sum by the number of experts. The quotient was the value for which he pronounced. If I were to do the same with this case, I think the quotient would come out a good deal above two hundred rupees. I do not mean to say that this primitive arithmetical process would produce a very trustworthy result, but it tends to show that, if we are erring, it is on the side of caution. That, I think, is the right side to incline to, in introducing such an alteration. If this experiment succeeds, it will be easy for our successors to raise the limit of value whenever they find it expedient.

"I come now to the qualifications by which we propose to guard the working of these principles; for if we attempt rigid unyielding limitations, they are sure to break under the pressure of hard cases. There are many cases in which money is not the measure of the thing at stake. The real quarrel may be about a person's honour, as in a defamation case; or the dignity of a family, as in a suit for an office; or for a revered chattel, such as an idol; or a cherished spot of ground, such as a grave. Or the suit may involve a point of law of great public importance. The amount of ship-money demanded of Hampden was only twenty shillings; but the question was whether the King, or only Parliament, could levy taxes. In all such cases, we propose to give the High Court a discretion to admit a second appeal. It will be a question which the

Select Committee must determine, whether we shall say generally that they may admit a second appeal whenever necessary for the purposes of justice. I myself am disposed to think that the more elastic such a power is, the better it will work; and there is authority for it in the Court Acts recently passed for Oudh and for British Burma. But I will not further discuss it here.

"We propose also to give to the Judge who pronounced the decree power to allow an appeal from himself. This seems very absurd to some gentlemen, who think that Judges cannot be trusted with such a power. It seems to me, however, that this safeguard is a desirable one; that this power will often save the expense and trouble of applying to the High Court; that it is not likely to be lavishly used; and that if we can trust a man with the power of pronouncing a final decree, *à fortiori* we may trust him to say that an appeal shall lie from it.

"Now that the Council have heard a tolerably full account of the restrictions we propose to place on second appeals, they are in a position to decide whether the circumstances of the intermediate Judge justify the fears of those who think that the rule about two concurrent decrees will make him lazy. In the first place, the rule will only tempt him to affirm the first decree in those cases which are over two hundred rupees in value. If he deals differently with this class of cases and with those which are under two hundred rupees, his inconsistency will soon betray him. If, on the other hand, he affirms all decrees indiscriminately in order to preserve his consistency, applications to the High Court to have a second appeal admitted will certainly disclose his neglect of duty. I must say that the apprehension seems to me rather a chimerical one.

"It remains for me to give the Council some idea of the number of appeals which will be shut out by the proposed measure. I can only do it very imperfectly. I have a return showing that, in the year 1873, there were 2,453 special appeals decided in the High Court, of which 1,655 were under two hundred rupees in value. How many were appeals from affirmations, I do not know. In the first four months of 1873, 620 special appeals were decided, of which 260, or about two-fifths, were appeals from affirmations; 416 fell under the limit of two hundred rupees, and 521 under the aggregate operation of the two limitations. According to this, about five-sixths of the cases would be excluded by the two rules if unqualified: but of course many would be let in again by the discretionary powers of the Court, and how many those would be it is impossible to conjecture. I should be surprised if it were found that less than half of the appeals which now reach the Court were shut out. I believe that fully that proportion

ought to be shut out. On the other hand, there will be some appeals on questions of fact, which are shut out under the present system. At all events, we may hope that the frivolous and petty cases which now reach the High Court in great numbers will cease to do so; that some substantial cases will reach it which now cannot do so; and that those which do reach it will be decided in a way more satisfactory to Judges and suitors.

"I ought to add that the High Court as a body have given a general approval to the principles of the measure so far as I have described them.

"There is yet, however, an important proposal which I have not mentioned. I told you that in cases of the Small Cause type decided in the Munsif's Court, there is no second appeal unless their value exceeds five hundred rupees. We now propose to enact that in such cases there shall be no appeal at all unless their value exceeds twenty rupees. This, again, is a point at which the costs must exceed the sum at stake. The Council will remember that from the Small Cause Courts themselves there is no appeal, though the suit may be for one thousand rupees. With regard to suits for twenty rupees, it is provided that the Registrar of the Small Cause Court shall have jurisdiction if the Local Government chooses to give it to him, and that without appeal. I understand that no Registrars have been appointed, so that this provision has not been brought into work. But it shows what has been thought prudent in Small Cause Courts. We think it reasonable to put the Munsif's decree on the same footing as the Registrar's, though with considerably more safeguard, because we propose to qualify the finality of his decrees in the same way as we qualify the finality of appellate decrees. I am sorry that I have not in my hands information which would enable me to give the Council an idea what number of suits would be affected by this alteration. I can only commend it to you as sound in principle, at least if my foregoing arguments are accepted, and likely to be useful in practice."

The Motion was put and agreed to.

CHIEF COMMISSIONER'S POWERS (SYLHET) BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide for the exercise, in Sylhet, of the powers of the Lieutenant-Governor and Board of Revenue of Bengal. He said that the Council would remember the little Act recently passed to provide for the transfer of powers when the Chief Commissionership of Assam was set up. It was merely a formal matter. Now it was necessary to introduce a Bill of the same kind for Syhet, because Sylhet was being assigned to the Chief Commissioner of Assam.

The Motion was put and agreed to.

EUROPEAN BRITISH MINORS BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide in the Panjáb and elsewhere for the guardianship of European British Minors. He said that this was a very simple case. In the territories which were subject to the jurisdiction of the High Courts, the Charters of the various High Courts provided for appointing guardians of European British Minors. Several Acts of this Council, XIV of 1858, XL of 1858, IX of 1861 and XX of 1864, provided for those persons who were not European British subjects. But there was a gap in the law with respect to those parts of the country to which the powers of the High Courts did not extend, and with respect to European British subjects; and this defect had been illustrated by two cases which occurred in the Panjáb. The object of this Bill was to provide for those cases.

The Motion was put and agreed to.

DISTRESSES (PRESIDENCY TOWNS) BILL.
SHERIFFS BILL.
STATUTES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE then said that the next three items in the list of business were all connected together, and he would ask the Council to allow him to make some preliminary observations which would apply to all the Bills. They all sprung from the wish of the Government to publish a new edition of the Statutes applying to British India. In framing the list of Statutes it was found that there were some cases in which it was doubtful whether or no a statute applied to British India, and others in which the old Statute-law was in a confused state.

In the year 1726, Courts were established by Royal Charter in the Presidency Towns, called 'Mayors' Courts;' and it had always been held that, at that time, the whole of the English Statute-law applicable to the local circumstances of the country was introduced into the Presidency Towns. The great mass of English Statute-law prior to 1726 fell under one of the four classes he would mention. First, there were a great number of Statutes which never were applicable in India at all; such as the Statutes regarding such subjects as Advowsons, Elections, and many others of the same kind. Then there was also a great mass of Statutes superseded by Indian legislation; such were all those relating to criminal law which were suspersceded by the Penal Code and the Criminal Procedure Code. These two classes comprised the great bulk of the Statute-law prior to 1726. Then there were some clearly applicable to the

whole of British India and indeed to all British possessions; such were the Statutes relating to the Settlement of the Crown. There were others again which were applicable to English persons and their property, but were not applicable to Hindús or Muhammadans, or other persons having a law of their own. Such were those which underlay the law of Real Property, the Statutes of Entails or *De donis*, of Subinfeudations or *Quia emptores*, and of Uses; Statutes which had got so encrusted with commentaries and judicial decisions that they seemed to an ordinary eye to be a part of the Common Law. These four classes embraced nearly the whole of the Statute-law prior to 1726. But there was another class of Statutes as to which there was some doubt whether they did apply, and if they did, whether they ought to apply to India. Such were the Statutes regarding Maintenance and Champerty; the Statutes relating to Arrests on Sunday; the Statutes relating to Distresses for Rents, and so forth.

What the Government proposed to do was, first, to enact a declaratory law, saying that the Statutes which were placed in the schedule were in force in British India, and repealing all the other Statutes. By that means we should get, in a compendious form, a declaration of the state of the Statute-law prior to 1726.

There were two special subjects upon which there were a number of old Statutes. We could not say that they were not in force, but they contained a great quantity of obsolete matter. These were the Statutes relating to Distresses for Rents and the Statutes relating to Sheriffs, and, in connection with the duties of Sheriffs, the law relating to the execution of decrees. Therefore it was proposed to pass the three Bills which were entered in the list.

First in importance was the Bill to declare the Statutes in force in the Presidency Towns. That Bill would clear away some doubtful questions. Take, for instance, such a law as that relating to Maintenance and Champerty. There were eight old Statutes on that subject, the most modern of which was a Statute of Henry VIII. The law, as practically administered, both in England and in India, was entirely different from the Statute-law. The old Statutes were in some respects too wide, and declared to be illegal and criminal a number of transactions very common in practice and treated as quite innocent and legal. In other respects they were too narrow, and failed to include a number of transactions which Courts of Justice held to be void as being unrighteous and against public policy. The fact was that the Courts had been proceeding on a code of morality rather than upon the Statute-law. Maxims much broader and more flexible than those of the Statutes had been intro-

duced, he believed originally by the great Ecclesiastical Chancellors, had been adopted by the Courts and had become part of the English Common Law. In India exactly the same law prevailed. We might abolish every one of those Statutes without interfering with the course of justice: on the contrary, if we were now to promulgate them, they would be taken as expressing the actual law and do considerable mischief. The schedule to the Bill had been framed on the cautious side, by the insertion of every Statute as to which it did not appear clear either that it did not apply or ought no longer to apply to British India. He hoped the learned lawyers in the Presidency Towns would give the Council the benefit of their opinion, and would point out all cases in which they thought the Bill had erred.

There was one section of the Bill which applied to Statutes passed subsequently to 1726. It was the third and last section. There was sometimes a good deal of doubt whether a particular Statute applied to British India or not, and there were conflicting decisions upon the point. Again, it was doubtful whether, where an old Statute did apply, subsequent amendments made by the Statute-law in England applied to India also. Of course there was not the least reason why they should. They might be suitable to the state of circumstances in England, and not to those in India. It was therefore proposed to apply the reasonable rule that a Statute should not apply to India unless it was applied by express words, or by necessary implication.

With regard to the Bill relating to Distresses for Rents, there were no less than eleven Statutes which related to that subject. They contained much obsolete matter. They were passed in days when legislators were all landlords, and they doubtless thought the subject of enormous importance. As regards arrears of rent which did not exceed one thousand rupees, they were provided for by our own Small Cause Court Act. It was now proposed to extend the provisions of that Act, with such amendments as experience had suggested, to all rents. It would be found that the Bill drawn on this subject contained every thing useful in the old Statutes, and that we might safely repeal all the eleven Statutes to which he had referred.

With regard to the Sheriff, there were ten Statutes relating to him, and they also contained a great quantity of obsolete matter. It was proposed to repeal them and to consolidate the law. The law was now contained in the old charters of the Supreme Courts and in two Acts of this Council, VIII of 1852 and VI of 1855, and in the ten old Statutes. The Sheriff's Bill was a purely consolidation Bill, and as such MR. HOBHOUSE introduced it.

The Hon'ble MR. HOBHOUSE then introduced the Bills—

To regulate Distresses for Rents in the Presidency Towns.

To consolidate the law relating to the Sheriffs, and to the execution of the decrees of the High Courts in the exercise of their Original Civil Jurisdiction.

To declare the Statutes in force in the Presidency Towns.

and moved that they be respectively referred to Select Committees with instructions to report in three months.

The Motion was put and agreed to.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill for the further amendment of Act No. I of 1859 *(for the amendment of the law relating to Merchant Seamen)*, and for other purposes.

Leave was granted.

The following Select Committees were named:—

On the Bill to regulate Distresses for Rent in the Presidency Towns—The Hon'ble Messrs. Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

On the Bill to consolidate the law relating to the Sheriffs, and to the execution of the decrees of the High Courts in the exercise of their Original Civil Jurisdiction—The Hon'ble Messrs. Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

On the Bill to declare the Statutes in force in the Presidency Towns—The Hon'ble Messrs. Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

The Council adjourned to Thursday the 2nd July 1874.

CALCUTTA,
The 23rd June 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt Govt Printing—No. 153 L D.—26-6-74—280.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 2nd July 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble Rájá Ramánáth Tagore.

CIVIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to amend the law relating to Civil Appeals in the Presidency of Fort William, and moved that it be referred to a Select Committee with instructions to report in three months. He said that the main principles and larger details of the Bill were fully discussed on the last occasion, if anything could be said to be discussed which was only spoken to by one man. He had now only to show how it was proposed to carry into effect the principles explained at the last Meeting.

The Bill was by the first section confined to Bengal.

Section two dealt with the twenty rupee limit. The Council would observe that it was confined to cases of what he had called the Small Cause type; that was to say, roughly speaking, to ordinary money demands. That would not affect that large class of suits which were concerned with questions in dispute between landlord and tenant, and which was now excluded from the jurisdiction of Small Cause Courts, and from the rule which prevailed in the Civil Courts prohibiting second appeals when the value of the suit was under five hundred rupees. It was only in cases where at present a second appeal was barred in suits under the value of five hundred rupees, that we proposed to abolish the first appeal when the value of the suit was under twenty rupees. There appeared to be some misapprehension

on this subject. He mentioned that particularly, as he was informed that some persons had become alarmed by supposing that the bar was extended to all appeals whatever, even in suits concerning land, where the subject-matter was only of the value of twenty rupees. That was the principal effect of section two. Two other cases were inserted in the section in which it was proposed to bar all appeal. Neither was of great importance, and they might be the subject of discussion in Committee. One case thus added, in which all appeal was prohibited, was where the decree had been made by consent of parties, or where there had been a written agreement to abide by the result of a decree made by an impartial tribunal. It was suggested to us by Mr. Ricketts of the North-Western Provinces, who urged that it would be a good thing to encourage agreements not to appeal. In the second case it was provided that there should be no appeal when it would only affect costs which by law were left to the discretion of the Courts. That was the rule which prevailed in England. In fact, the rule was wider there than the expression of it in this paragraph. The rule in England was that the Court above would not hear appeals in any matter which was purely discretionary with the Court below. It considered that it had not got the materials to enable it to hear appeals on such subjects, and that the Judge of first instance was likely to be the better judge in purely discretionary matters. This rule would probably not affect many suits.

Then came section three which contained the principal rules on which MR. HOBHOUSE had last week detained the Council a long time. Second appeals were barred when the limit of value did not exceed two hundred rupees; and again, when the first Court of appeal had agreed with the Court of first instance. The Council would perceive in the sub-section (*a*) to section three, a qualification placed on the first rule of pecuniary limit. It was provided that the limit should be two hundred rupees, or such less sum as the Local Government might from time to time direct for the district in which the suit was brought. That was a suggestion made, with a number of other useful suggestions, by Mr. Field, who had pointed out that what might be a good limit to lay down in the 24-Parganas, might be a bad limit in Chittagong. Therefore, he suggested that some discretion should be left to the Local Government to draw the line lower than the limit laid down by the Act. The next thing was to provide the means of moderating the action of the preceding limitations, lest they should be too harsh and stringent. For this purpose section four gave power to the Judge who made the decree to say that there might be an appeal from that decree. The Council would perceive that this power was confined to the judge personally, and not given to the Court: it was given

to the Judge who was the very person who made the decree, and not to his successor. There were two reasons for conferring this power. The first was that the man who had heard the whole case and who had made the very decree from which the parties wished to appeal, was perhaps the best judge of any body on the question whether there should be an appeal or not—at all events his opinion that there should be an appeal was a very weighty one. The second reason for giving this discretionary power to the Judge who made the decree was to save the expense of an application to the High Court. There might be a great many cases in which it might be quite obvious that a second or special appeal should be allowed, and in these the application might be made and granted without any separate hearing and within five minutes of the delivery of the judgment, and the parties would be put to no expense in going to the High Court for such permission. It was obvious that these reasons did not apply to a man's successor, but only to the man who had pronounced the decree. By section five it was provided that the Judge who did allow a second appeal should put his reasons into writing, and that such statement should form part of the record.

Section six provided the further qualifications of the general rules of limitation above laid down. Under that section a second appeal might be allowed to the Court above where it was not possible to estimate the subject-matter of the suit at a money-value, and where any question raised in the suit was of such importance to the public as in the opinion of the Court allowing the appeal to render an appeal expedient. These expressions were intended to cover the various cases which MR. HOBHOUSE specified in moving for leave to introduce the Bill. Whether they were so covered or not would be for the Select Committee to determine. He would only say, generally, that it was intended to cover cases of a particular character which raised important public questions, and cases whose value to the parties was not adequately represented by the money-value of the subject-matter in dispute. Then came the more general qualification, which he had mentioned as being a subject of considerable difficulty, namely, that a second appeal might be allowed where in the opinion of the Court above an appeal was necessary for the purposes of justice. It was proposed to add an explanation that it was not meant that the Court should ask itself the question whether or no it agreed with the decision of the Court below, and on finding that it did not, should hold that it was necessary for the purposes of justice that an appeal should be granted. That would make the whole rule perfectly nugatory. But where there had not been a proper hearing, or where some manifest mistake had been made, the Court might allow a second appeal. It had lately been publicly stated,

whether truly or not he did not know, of a certain Judge, that he was in the habit of committing the hearing of cases brought before him to one of the inferior officers of his Court. In such a case there would be good ground to apply to the Court above and say that there had been no proper hearing: that the Judge, it was true, had delivered judgment, but he had taken all his materials from somebody else. And then it would be for the Appellate Court to say whether or no there should be a second appeal. Again, there might be a mistake made which was common to all the parties, for which it could not be said that anybody was to blame and which had prevented the true case from coming before the Court. MR. HOBHOUSE remembered applying for the re-hearing of a case after some thirty years, because all the parties had overlooked a very old private Act of Parliament that bore upon the case. Its very existence had been forgotten, and it had a material bearing upon the case. The question debated was whether the Act of Parliament had been overlooked or not. The Crown, which was opposing the application, contended that his clients knew of the Act but considered that it was of no use to them, and that it was too late to alter their opinion. He persuaded the Court that there had been a complete forgetfulness of the matter, and so got a re-hearing. It was difficult to explain in abstract terms exactly what was meant, and the Select Committee might probably find it useful to give illustrations. It would be difficult, if not impossible, to use any language but such as was vague and would leave a great deal to the discretion of the Courts.

Section seven prescribed the time within which applications should be made for leave to appeal. The Bill proposed to give a short time where the application was to be made to the same Judge who made the decree. It was proposed that the time to be allowed in such cases should be ten days. It might, he thought, be even a shorter time. It was not desirable to prolong materially the time for appealing beyond what the present law allowed, so it was proposed to fix for the application for leave a time considerably shorter than that now laid down for appealing, and to make the time for appealing run from the date of the order allowing the appeal, instead of, as at present, from the date of the decree or order appealed against.

Then came a clause prohibiting special appeals in cases in which a second appeal was not specially allowed under the Bill. The next clause was intended to be a simple expression of the present system of appeals; and another was added for giving the subordinate Courts the power of stating a case or point of law for the decision of the Court above, instead of allowing an appeal.

That was the whole of the Bill. It was a matter of considerable delicacy and difficulty, and it was by no means sure that the meaning intended was

expressed. Any criticism, either within the Council or from without, would be most gladly welcomed.

He would add one remark. He had mentioned last week that the materials for judging of the number of appeals which the measure would affect were but scanty. He had that morning just received from Chief Justice Couch a further return embracing the period from the 1st January 1873 to the end of May of this year. That return brought out very nearly the same result as the similar return for four months which MR. HOBHOUSE had already mentioned. That earlier return showed that five-sixths of the appeals came under the combined operation of the two rules of limitation, if unqualified. The figures now furnished to him gave very nearly the same result, showing, as he calculated, that about six-sevenths came under the combined operation of the two rules. Of course the numbers which would be let in again by the discretionary action of the Courts must remain quite uncertain.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the *Calcutta Gazette* in English and in such other language as the Local Government might think fit.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Select Committee consist of the Hon'ble Messrs. Ellis, Bayley and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

The Hon'ble RÁJÁ RAMÁNÁTH TAGORE said he had been somewhat unwell and therefore had not been able to go over the Bill so carefully as he ought to have done, considering its great importance. But he would state to the Council some of the objections which had occurred to him, and he trusted the Council would receive his observations indulgently. He did not deny that special appeals had been the cause of much litigation in this country; so much so that men sometimes risked their whole fortune to fight out the battle in the second appeal. Besides, the second appeal was, no doubt, sometimes used as an instrument in the hands of the powerful to oppress the weak. That, perhaps, was well known to the Council. To put a stop to this evil, the hon'ble and learned Mover of the Bill had thought proper to propose the remedy set forth in the present Bill. It was proposed that where the money-value of the subject-matter in dispute was less than twenty rupees, and the suit was in the nature of a Small Cause suit, there should be no appeal. And

it was further proposed—proposals to which he (Rájá Ramánáth Tagore) agreed —that there should be no appeal where the decree had been made by consent, or the parties had agreed not to appeal, and where the subject-matter related to costs only, which were left to the discretion of the Court. The proposals also extended to prohibit second appeals where the money-value of the subject-matter was less than two hundred rupees, and where the first Court of appeal agreed with the Court of first instance. These prohibitions might, however, be dispensed with by the Court that made the decree whenever it thought fit, and by the Court above where it was impossible to estimate the subject at a money-value, or where any question raised in the suit was of such importance to the public as to render a second appeal expedient, or where an appeal was necessary for the purposes of justice. Power was also given to the first Court of Appeal to state a case instead of allowing a second appeal. He had no objection to offer to the first of these proposals, namely, to the limitation of twenty rupees in suits in the nature of Small Causes; and he had none also to state to the proposal that there should be no appeal where the decree had been made by consent, or where the parties had agreed not to appeal, or where the subject-matter in dispute related only to costs. To these proposals he had no objections, and with regard to them he agreed entirely with the hon'ble and learned Mover of the Bill. But to the prohibition of a second appeal where the subject-matter in dispute was less than two hundred rupees, he took objection. If the right of second appeal were limited to cases where the money-value of the suit exceeded two hundred rupees, the greater portion of the suits which the people now brought in order to carry on ordinary trade and mercantile operations would, in a measure, be excluded. Consequently, the limit proposed appeared to him to be somewhat arbitrary. Why should the limit be fixed at two hundred rupees and not at some higher figure? Then, again, he begged respectfully to ask the hon'ble and learned Mover whether he intended to exclude from the advantages of a second appeal zamíndárs and ryots whose litigation generally was for small amounts—five, ten, or perhaps a hundred rupees. If the litigation between zamíndárs and ryots were to be excluded from the advantages of a second appeal, then grave injustice would be done to a most important section of the community, for, speaking broadly, they were the props of the British Government, so far as its financial prosperity was concerned. They were the people who contributed the greatest amount of revenue; and they had the largest stake in the stability of the British Government in this country. But he believed the hon'ble and learned Mover of the Bill did not knowingly intend to take away from the ryots and zamíndárs a privilege which they had enjoyed ever since the time of the permanent settlement. At present, whatever was

the magnitude of the amount at stake, they had the privilege of going up to the High Court for final decision. Let the hon'ble member consider the great rent case of Nuddea which came before the High Court, and say whether it would have come before it under the limitation of two hundred rupees as now proposed by him. Rájá Ramánáth Tagore therefore trusted that the Select Committee to which the Bill would be referred would take this important point into careful consideration.

He thought also that the proposal that there should be no second appeal where the Court of first appeal agreed with the Court of first instance was open to objection on principle; because, taking into consideration the constitution of the Mofussil Courts, if such a restriction were put upon the right of second appeal, it would lead to great abuses. And therefore he trusted that the Select Committee would also take this point into consideration.

He had no further remarks to make except, that he found there was a clause in the Bill which provided that the Act should come into operation immediately upon its passing. This, he thought, was objectionable on principle. The legislature ought to give time to the people whose cases would be affected by the operation of this Bill to arrange their affairs and settle their disputes before this Act came into operation, because many transactions had taken place between men under the belief that their cases would be thoroughly sifted on second appeal; and if they were suddenly deprived of that benefit, the injustice to them would be very great. He would suggest, therefore, that a certain time should be allowed to dealers, merchants, and others to settle existing disputes.

The Hon'ble MR. HOBHOUSE quite concurred with his hon'ble friend Rájá Ramánáth Tagore in thinking that the Select Committee ought to pay very great attention to all that he, the Rájá, had stated; and MR. HOBHOUSE had no doubt that they would do so, and he was glad that they were to have his hon'ble friend's services on the Select Committee. He would now answer him on two points.

In the first place his hon'ble friend appealed to him to know whether it was proposed to exclude from second appeal all questions between landlords and tenants. What MR. HOBHOUSE said was this—where these questions assumed the shape of mere money-questions; where there were no rights, which could not be quite well measured by money in dispute, it was his intention to exclude such cases from second appeal. If there were less than two

hundred rupees at stake, both parties should be contented with a single appeal. Enough of tribunals was provided for the amount at stake. But if they could show that there were rights involved beyond the mere money at stake—rights affecting other persons; rights of such importance to the public as to render a second appeal expedient; rights of importance in a political point of view—such cases would fall within the qualifications which would enable the Court to dispense with the prohibitions prescribed.

Again, his hon'ble friend was under the impression that the latitude of appeal which was now open to these parties had been their right ever since the time of the permanent settlement. On the last occasion MR. HOBHOUSE was at some pains to trace the history of this matter, and if he was right, his hon'ble friend was not right. Down to the year 1803, there was only one appeal which lay to the Sadr Díwání Adálat, and no case of less than one thousand rupees in value could be the subject of such appeal. From 1803 to 1843 there was a special appeal properly so called, such as it was proposed to give by this Bill. But there was no right of second appeal. The appeal was only given under the Regulation of 1803 and subsequent Regulations to the same effect, at the discretion of the Court, "if on the face of the decree of the zila or city Judge, or from any information before the Court, it should appear to them to be erroneous or unjust, or if from the nature of the cause, as stated in the decree, or otherwise, it should appear to them of sufficient importance to merit a further investigation in appeal". So that during those forty years there was the same sort of discretion which it was proposed to give now, only not so wide; and his hon'ble friend was mistaken when he said there was any such right ever since the time of the permanent settlement. In 1843 there was established the mongrel thing which succeeded to the name, but not to the nature, of the Special Appeal, namely, a regular second appeal upon points of law and practice at the will of the parties. And that was the arrangement which had caused so much reasonable dissatisfaction.

The Motion was put and agreed to.

CHIEF COMMISSIONER'S POWERS (SYLHET) BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the introduction of the Bill to provide for the exercise, in Sylhet, of the powers of the Lieutenant Governor and Board of Revenue of Bengal.

Leave was granted.

EUROPEAN BRITISH MINORS' BILL.

The Hon'ble MR. HOBHOUSE then introduced the Bill to provide in the Panjáb and elsewhere for the guardianship of European British minors, and moved that it be referred to a Select Committee, with instructions to report in three months. He had explained the object of this Bill when he got leave to introduce it, and he would now show how it was proposed to effect that object. The first section of the Bill before the Council showed its extent, which in one respect was a matter of very great difficulty. There was no particular difficulty about defining the geographical extent of the operation of the Bill, because it was necessary only to take care that it covered all British India not within the jurisdiction of a High Court. But with regard to its social extent, there was that difficulty which was always encountered in endeavouring to provide one law for one class of persons and another law for another class of persons. The definition of European British subjects, British-born subjects, Christian subjects of Her Majesty, and other similar expressions, which occurred both in English and Indian Acts, was an exceedingly difficult thing. What was proposed here, and it would be a matter for the Select Committee carefully to consider, was that the Bill should apply to persons born in the United Kingdom of Great Britain and Ireland, or any British colony, plantation, or settlement other than British India, and to their children and grandchildren. As far as could be judged, that would include all that it was desired to affect. There was no doubt that by this definition persons might be included for whom the law was not designed, such as negroes and others. It was easy to point out some absurdities of that kind, and to make the definition a subject of jest. But probably no practical difficulty would arise from including too many classes. Practically speaking, such machinery as this was used only by persons possessing property, and classes of the kind just referred to would not be found in this country and in possession of property. In such a matter as a Criminal Procedure Code, it was much more difficult to define all that was wanted and to exclude all that was not wanted. But in a subject-matter of this kind, a wide definition might more safely be relied on, because the Act would be applied only to persons possessing property.

It was proposed that a minor should be defined as a person who had not completed the age of eighteen years, so as to follow former precedents and the rule adopted in the Mahárájá of Vizianagram's Bill.

One part of the Bill, Part II, related to the appointment of guardians. It was proposed to give this power to the mother of a minor, who had not that power at present by law, in case the father was incompetent or dead; and the Court would have such power in every instance. Then the

question arose as to what should be done if a minor had property in more than one province: suppose, for instance, in the Panjáb and in Oudh. It was proposed that the Court which had jurisdiction over the minor by his residence should appoint such guardians of his properties as it thought fit. That was the simplest plan. Whether there were any administrative objections to that plan MR. HOBHOUSE did not know at the present moment. There might be such objections. There might be reasons why the Courts of the Province in which the minor did not reside but did possess property should have something to say to the appointment of a guardian. If there were any such, he hoped they would be brought to notice by the local authorities. What was thought the simplest plan had been followed, and what was *primâ facie* the best. Then came two or three sections relating to procedure, and the Council would see that in framing them, Act IX of 1861 had been followed. Then there were laid down one or two broad rules to guide the Court in its appointment of guardians. These would be found in section 10, and two of these rules, (*a*) and (*c*), expressed what was the English law. Rule (*b*) did not express the English law, because it gave rather more *locus standi* to the mother than the English law did. Here the New York Civil Code had been followed.

The next Part related to the duties, rights, and liabilities of the guardian, and it was proposed with respect to the religion of the ward, and with respect to the bringing back a ward who had deserted to the home of the guardian, to follow what he believed to be the rules of the English law. That part of the Bill prescribed some of the simplest duties of guardians, as to taking care of his ward's property and as to his power of leasing, and also showed when his authority ceased.

Several of these provisions, referring to the duties and liabilities of guardians, were in the Bill which was now before the Council, to declare and amend the laws in Oudh. There they had experienced the same difficulty as that which had led the Panjáb authorities to propose the present measure. The provisions in the Oudh Bill would therefore be superseded by this Bill if passed into Law.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in English in the Panjáb, Oudh, the Central Provinces, British Burmah, Coorg, and Assam Gazettes.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to amend the law relating to Civil Appeals in the Presidency of Fort William,——The Hon'ble Messrs. Ellis, Bayley, and Inglis, the Hon'ble Rájá Ramánáth Tagore and the Mover.

On the Bill to provide in the Panjáb and elsewhere for the guardianship of European British minors,——The Hon'ble Messrs. Bayley and Inglis and the Mover.

The Council adjourned *sine die*.

CALCUTTA,
The 2nd July 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt. Govt. Printing.—No. 173 L. D.—7-7-74.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 2nd September 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble J. F. D. Inglis, C. S. I.

The Hon'ble Rájá Ramánáth Tagore.

The Hon'ble J. R. Bullen Smith.

CHIEF COMMISSIONERS POWERS (SYLHET) BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to provide for the exercise, in Sylhet, of the powers of the Lieutenant-Governor and Board of Revenue of Bengal. He said that, when he moved for leave to introduce this Bill, he explained to the Council the exact extent and tenor of it. But he thought it better to explain it over again, as some time had elapsed since the last occasion, and as he understood that some inhabitants of Sylhet and others were of opinion that this measure was a measure for transferring Sylhet to the Chief Commissionership of Assam. It was nothing so extensive. The transfer was a purely executive operation. By Act of Parliament, the power of transfer was placed in the hands of the Executive Government, and the Secretary of State had decided to sanction the transfer. Therefore, the transfer of Sylhet to the Chief Commissionership of Assam was made by the Executive, and by such transfer the great bulk of the executive administration passed over to the Chief Commissioner of Assam by that Act. The same Act of Parliament that gave power to the Executive to make such transfer, said that, where it happened that any particular jurisdiction was conferred by law or regulation, it should be affected only by law or regulation. There were one or two small matters of jurisdiction which were conferred by some old Regulations on the Board of Revenue and on the Lieutenant-Governor of Bengal by some modern Acts. MR. HOBHOUSE could not undertake to specify what those matters

were. To do so, would necessitate an unlimited search: we should have to search through all the Regulations and Acts. As a specimen, he might mention such matters as the Municipal Acts, under which certain control was reserved in the ultimate resort to the Lieutenant-Governor of Bengal. It would be inconvenient to have this municipal jurisdiction placed in the hands of the Lieutenant-Governor of Bengal, when all other matters would be under the jurisdiction of the Chief Commissioner of Assam. There were a few little things of that kind which required to be transferred by law, and for that purpose we came to the Legislative Council. MR. HOBHOUSE would describe this Bill as he had described a corresponding Bill which had already been passed into law, namely, as a merely formal matter; because it was only asking the Legislative Council to perfect that which, as to the greater part, was done by the Executive.

Now, he proposed to apply to His Excellency the President for the suspension of the Rules for the Conduct of Business, and if the Council agreed with him as to the purely formal nature of this Bill, he conceived there would be no objection to that suspension. It would be reasonable to suspend the Rules even if this Bill which the Council were about to pass was the first Bill of this kind, and it would be hardly worth while to call the Council again together to go through the various stages of such a Bill. But this was not the first Bill of the kind. The Council had recently passed an exactly similar Bill as to Assam, and the present Bill followed closely in the steps of that former measure. There had been no discussion as to one single word of the former Bill. There was some discussion as to the letters forming one of its words; but with the exception of the alteration of one word as to spelling, there was no dispute. But here we had not even any dispute as to the spelling.

His Excellency THE PRESIDENT said:—"I have been asked, with reference to this Bill, to suspend the Rules which provide that a Bill should be sent to a Select Committee in ordinary cases. I think that the reasons which my friend Mr. Hobhouse has given for the suspension of the Rules in this case are sufficient. The Bill is so short that no examination in Select Committee, or further discussion in Council, can be required.

"As I have recently come from the new Province of Assam, I wish to observe that the inhabitants of Sylhet presented me with a memorial representing certain inconveniences which they believed would result from the transfer of Sylhet from the Lieutenant-Governorship of Bengal to the Chief Commissionership of Assam. As Mr. Hobhouse has very properly

pointed out, the transfer itself is an act of the Executive Government and not of the Legislative Council. The Bill before the Legislative Council simply provides for the transaction of a certain portion of the business after the transfer has been made. The transfer of any district in India from one jurisdiction to another naturally must occasion some inconvenience to the inhabitants of the district transferred. The ordinary channels of business must, to a certain extent, no doubt, be disturbed.

"Hon'ble Members are aware of the reasons for the establishment of the Chief Commissionership of Assam. They are, mainly, that the burden of the government of this great Province of Bengal has been found too heavy even for the very able and distinguished men who, in recent years, have filled the office of Lieutenant-Governor. It cannot, I think, be disputed that it will be a great advantage to the interests of the north-eastern portion of Bengal that a separate Chief Commissionership shall be established. As regards Sylhet itself, the transfer has been so made as to occasion the least possible inconvenience.

"The administration of civil justice will remain as before, with an ultimate appeal to the High Court in Calcutta. It is only the functions of the Board of Revenue, and some other miscellaneous functions performed by the Lieutenant-Governor, that will be transferred to the Chief Commissioner.

"I cannot but think that the inhabitants of Sylhet have exaggerated the possible inconvenience of the change, looking to the small amount of business to be transferred, and I am satisfied that Colonel Keatinge, the Chief Commissioner, in his progress through the Chief Commissionership, will frequently visit the town of Sylhet, where there will be ample opportunity for all those who wish to have personal communication with him to have that communication without being put to the inconvenience of leaving the district. I answered the memorialists that the transfer of Sylhet had been recommended by the Lieutenant-Governor of Bengal, Sir George Campbell; it had been the subject of considerable deliberation both on the part of the Government of India and of the Secretary of State in Council; a petition from Sylhet had been received some time ago, and had been considered by the Government of India and by the Secretary of State. And under these circumstances, it was my duty to inform them that the decision on the subject was final and would not now be disturbed.

"I have said this because I wished to explain to the Members of the Council that the objections to the transfer which I received in Sylhet raised

no new matter, and that the policy of the transfer had been the subject of very careful consideration before a decision was arrived at."

The Hon'ble MR. HOBHOUSE then applied to His Excellency the President to suspend the Rules for the Conduct of Business.

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA,
The 2nd September 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

Office Supdt. Govt. Printing.—No. 261 L. D.—12-9-74.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Wednesday, the 25th Nov. 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q.C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble Rájá Ramánáth Tagore, C.S.I.

The Hon'ble R. A. Dalyell.

The Hon'ble J. R. Bullen Smith.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to amend the law relating to Probates and Letters of Administration. The object of the measure was to enlarge the local area over which a grant of probate now operated. The subject was at present regulated by the Indian Succession Act (X of 1865), section 242. By that it was provided that a probate should operate throughout the province in which it was granted. Then occurred the question why should it not operate beyond that province and throughout the whole of British India? If different parts of British India were subject in this respect to different legislatures, there would be a very good reason why a probate should not operate beyond the sphere of its own legislature. Or if, again, British India were subject to different fiscal regulations, as is the case with India and England, there might be very good reason why a grant should not operate beyond that area to which it paid tax. But there were no such reasons here, and it seemed to him that the present law was simply the outcome of incidental circumstances, and would not bear close examination. Those who passed it were familiar with independent Courts of judicature in India in the different presidencies, and they were also familiar with the local operation of probates under the old English

system, and those two streams of tradition combined to produce the present law, by which a probate was confined to the province in which it was granted, the question not having been raised in the year 1865, whether it was convenient or reasonable to confine it to that province. But when that question was raised, he thought it would be seen that it was more consistent with principle that a personal representative, duly constituted anywhere, should be recognized everywhere, just in the same way as the heir-at-law takes the place of his ancestor everywhere, and not in one locality alone.

It was not however merely for the purpose of some theoretical improvement that this measure was introduced. Unless there had been some practical hardship and inconvenience arising from the present state of the law, he did not think that the Council would have been troubled with this measure; but the Government was moved by the Madras Chamber of Commerce, who had sent a statement of cases in which they showed that practical hardship had resulted. He would read to the Council two or three of those cases, and they would see that they were dealing with an actual mischief and not an imaginary one.

The Madras Chamber of Commerce said :—

"Captain W. H. Campbell, of the Madras Staff Corps, had four shares in the Bank of Madras and other assets here to the additional value of rupees 5,000. The costs for obtaining letters of administration in Madras amounted to rupees 226, exclusive of stamp-duty. He had also six shares in the Bank of Bombay and no other assets in Bombay. An exemplification of the letters taken out here, together with a power-of-attorney, had to be sent to Bombay to take out letters of administration there. These cost rupees 387, exclusive of stamp-duty."

The Council would see in this case that the necessity of taking out a separate probate in Bombay cost more than the necessity of taking out administration in the place where the testator was residing.

Again, the Chamber said :—

"Mrs. A. J. Murray, a widow with small means, died at Sholapúr, leaving a little property there and assets in Madras to the value of rupees 3,500. Her Will was proved and probate thereof taken out from the District Court of Poona. Letters of administration are required to be taken out in Madras."

Then they cited another case relating to the estate of Colonel Anderson.

"Colonel J. C. Anderson, of the Madras Engineers, left assets in Madras to the value of about rupees 2,700, had six shares in the Bank of Bombay and funds in Calcutta. Because three separate letters of administration are required to be taken out in the three presidencies, his estate is left unadministered to, though he died some few years back."

Of a fourth case they said :—

"Mr. Percy Gough, a member of the firm of Messrs. Lecot and Company and of this Chamber, writes as follows regarding a case which came under his personal observation :—

"I was one of the administrators to an estate comprising property in Madras and Bombay. If letters of administration could have been taken out in Madras for the whole of the above property, the law-charges would have been only rupees 380; whereas an additional expense on this account, amounting to rupees 440, was incurred in Bombay. The agency commission of one per cent., amounting to rupees 1,486, would also have been saved but for the necessity of the reference to Bombay."

Now after reading these cases, MR. HOBHOUSE thought the Council would be of opinion that the Madras Chamber of Commerce were right in asking that we should alter the law. Of course one must not exaggerate the consequences of altering the law. If estates are to be administered by a person living at a distance, agents will still be necessary and must be paid for; but what would be saved would be the necessity of a second payment of court-fees, the necessity of employing a professional person to take out letters of administration, and the necessity of going through the same formalities as in the first instance.

Objections had been made to any alteration of the law on these grounds. First, that the remedies available to creditors would be interfered with if the executor resided in one Presidency and the creditor in another; secondly, that the present system was calculated to afford greater protection to the assets, and therefore was better for the beneficiaries. With reference to those objections, he would ask the Council to consider the actual working of the present law. He thought they would find that it never was devised for the purpose of meeting those objections, and that it did not meet them at this moment. Take the case of a man residing at Arrah, leaving property there, dying there, and appointing an executor who also resides there. He takes out probate in Arrah, which operates over the whole province of Bengal. Suppose, again, that the testator possessed property in Chittagong and Benares. The probate taken out at Arrah makes the executor absolute owner of the property in Chittagong, many days' journey from Arrah. But with regard to the property in Benares, which was, so to say, under the executor's own hands, which he could attend to personally, he could not touch it without going to the High Court of the North-Western Provinces, or some Court in the North-Western Provinces, and taking out administration all over again. Such instances of the actual working of the law made it quite clear that what MR. HOBHOUSE stated at the outset was true, and that the law was not devised in the interests of the creditors

nor of the beneficiaries, but was the mere product of two currents of old thought and old traditions; the tradition of the independence of the presidencies of one another, and the tradition attached to probates in England, where separate probates were granted in each diocese or province. Nor did he see what right creditors had to say that money should be spent in order to bring the person of their debtor closer to them. How far that was an advantage to them, MR. HOBHOUSE did not discuss: there might be a few cases in which it was some advantage. But the person they trusted was the testator, and while the testator lived he could only be at one place. If a Bombay creditor trusted a man at Madras, his right of suit would be regulated by that circumstance amongst others. But why in the world should the death of the debtor alter the case? When the debtor was dead, why should the creditor be entitled to say that his representative estate should be split up into fragments so that one fragment might be better brought within his reach?

Then it was said that the beneficiaries would be affected. No doubt, the beneficiaries were above all persons the persons to be considered. But MR. HOBHOUSE very much mistook the feelings of beneficiaries if they would not prefer to save hard cash, and to have the disadvantage, if it was such, of a single representative, than to have a number of representatives with the disadvantage of having the estate diminished by so much. The Madras Chamber of Commerce, who were promoting this measure, represented beneficiaries, and they told the Council what were the feelings of beneficiaries. Probably they represented creditors also. Indeed, if an estate were insolvent, the creditors were the beneficiaries, so that they then had an interest in saving unnecessary expenditure. MR. HOBHOUSE himself felt the greatest confidence that, in altering the law in this respect, we should be legislating in the interests of all parties.

He had spoken only of testators and probates and executors, but the same considerations applied equally to intestates and to letters of administration and administrators.

There were two other and minor objects aimed at by this Bill. One was that occasionally too high a stamp-duty was paid on probates, owing to a mistake in the valuation of estates. There was no provision of law enabling a person who had made an excessive payment to recover the excess paid by him. The Government had been in the habit of taking such cases into consideration, dealing with them justly, and returning the money paid in excess. But the Financial Department would be glad that the right should be given to recover such excess payments. Another object for which the Bill made provision was

to meet cases where a second court-fee was paid in consequence of more than one probate being found necessary for the same estate, as, for instance, in case of all the executors becoming extinct and leaving no representative. According to law a second stamp duty had to be paid. The Government had, in such cases also, been in the habit of returning the second court-fee or stamp-duty; but there was no right to call on the Government to make a refund. The Bill would give that right.

These were the reasons for the introduction of the Bill.

The Motion was put and agreed to.

CIVIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend the law relating to Civil Appeals in the Presidency of Fort William. He said:—

"In presenting this report I shall be glad to take the opportunity of making such statement as time allows me respecting the course which the Committee have advised and the reasons which have influenced them. We advise that the Bill shall undergo some alterations; that it shall then be re-published; and that it shall not be passed until some little time has elapsed; a time sufficient for the consideration of what the Committee have said, and of what I have now to say, and for the preparation of amendments, should any Member of Council think fit to move any.

"It will be convenient if I first read to the Council exactly what the Committee have said about the general scope of the Bill and their present treatment of it. They say:—

"'The marginally noted communications from the Rájshahai Association, from the Secretary to the British Indian Association, and from the Pleaders of the High Court, Calcutta, all raise objections to the whole principle of the Bill, so far as it restricts the right of appealing. These objections are principally founded on the insufficiency of the existing Courts below the High Court to dispose of suits in a way satisfactory to the suitors. The Rájshahai Association submit proposals for improving the Mofussil Courts, but whatever consideration such proposals may receive from the Government, we have not considered them within the scope of our functions.

"'We think that the fears expressed about the operation of the measure are to a considerable extent due to an imperfect apprehension of the mode in which it is calculated to work, and in particular to some forgetfulness of the fact that, at the present time, there is no second appeal from a decision on the facts, even though the District Court may have reversed the decision of

the Court below, and may be clearly shown to have erred in so doing, and that the Bill proposes to open a door to appeal in such cases.

"'We do not wish to make light of the fears expressed about a change which everybody admits to be tentative and which it is therefore prudent to introduce cautiously. And we have made some important alterations with the view of meeting those fears to a considerable extent. For this reason we have wholly struck out the limitations placed by the Bill as introduced on first appeals, and have left them to be regulated by the existing law, namely, Act VI of 1871, section 29. We have, by section 5, clauses (*c*) and (*d*), conferred a much larger measure of discretion on the High Court to admit second appeals; and we hope we have made it clear, both by direct enactment and by illustration, that rent-suits as well as other suits raising questions of general interest will be fit subjects for a second appeal. Perhaps we ought hardly to describe this last point as an alteration, because it was the intention of the Bill as introduced; but the language then used may not have been sufficiently clear to prevent doubt whether it included all the classes of suits intended.

"'We have not felt justified consistently with the maintenance of the measure in going any further in the direction of greater latitude of appeal, and in our opinion the measure is one the main principles of which will be beneficial to the community they affect.'

"Now I do not wish to shelter myself under a general statement that those who differ from us have misapprehended the case. I wish to address myself specifically to what they have said, and to show where I think they are mistaken. It seems to me that they have over-rated the effects which they deem to be disadvantageous to them in this Bill, and have under-rated those which they deem to be advantageous; that they have compared the plan of this Bill, not so much with the existing law, as with a non-existing state of things in which two appeals are open to everybody; that they have assumed too readily that restrictions upon litigation are evil and facilities for it good, and that they have criticized the Bill rather by isolating its parts than by looking at their combined result.

"To show all this I must of course state my own views in my own way, and cannot promise that in all things I shall say exactly what my colleagues are thinking. Indeed, no two men can be expected to concur in a long train of reasoning on any but purely scientific subjects. But I hope to represent with tolerable fidelity the general upshot of the considerations which have led us to sign the sentences I have just now read.

"Now I am always very sorry to repeat myself, but this is a matter of considerable complexity and minuteness of detail, and I find it very necessary to refresh my own memory about it when I come to it after an interval of time. I will therefore take the liberty of recapitulating, though very briefly and only in outline, the mode in which this measure was presented to the Council on the

two occasions when I moved for leave to introduce the Bill and when I actually introduced it.

"The case stood thus—

"The main subject of our Bill is not that of appeals generally, but that of second appeals, or appeals from appellate decrees—those appeals which, though their nature has been radically varied, have for some 70 years borne the name of special appeals. There never has been a time when second appeals have been granted in all cases at the will of the suitor. They have always been subject to some very substantial limitation, either of pecuniary value, or of the discretion of the Court to admit them, or of subject-matter. Special appeals, properly so called, are those which are subject to the discretion of the Court, and are only admitted specially by it. That kind of appeal was created in the year 1803 so far as regarded the Provincial Courts of Appeal, and in the year 1805 so far as regarded the Sadr Díwání Adálat. It lasted till the year 1843. For it was then substituted a regular appeal of a mutilated nature; that is to say, an appeal lying at the option of the parties; not specially allowed by the Court; not resting on anything special in the case; but confined to points of law, and not admitting of any review of the facts. That species of appeal has lasted to the present day, and it has—I cannot say how long, perhaps always, certainly for many years past—given deep dissatisfaction to those who have to administer our laws, at least in Bengal. Its principal defects are the two that I will state. Lying as it does at the option of the parties, it is used by many in suits of a very trivial character for which the action of two Courts ought to be sufficient, and thus it causes a waste of power both to the State and to the parties. Excluding as it does the most important part of most cases, namely the facts, from discussion, it cripples the action of the High Court; it enables District Courts or Subordinate Judges who have only seen the dead record, to reverse the Munsifs who have seen the living witnesses, in a final and conclusive way; and it brings about the practice of remands, which is dilatory, expensive, and very uncertain in result. Other defects it has which are less direct than these, and I will not now mention them again.

"Thus it appears that in one way the present system gives too great a latitude of appeal; in another way it impairs the efficacy of appeals. I therefore set out by saying that the two main objects of the present measure were to check the undue latitude of appeal, and at the same to provide for the more efficient hearing of appeals in proper cases.

"In order to effect these combined objects we made the following proposals: First, that a second appeal should not lie as of right when the two Courts be-

low have concurred in a decree. Secondly, that a second appeal should not lie as of right when the value of the suit is below Rs. 200, or some lower limit to be fixed by the Local Government. Thirdly, that the Judge who pronounced the decree should have unlimited discretion to say that there shall be an appeal from his decree. Fourthly, that the High Court should have power to allow an appeal when the value of the suit is not measurable in money. Fifthly, that the same power should exist when the question involved is one of public or general interest. Sixthly, that the same power should exist when necessary for the purposes of justice; but that apparently wide rule was very much limited by an explanation which showed that it did not refer to error in the judgment of the Court below, but to miscarriages in the mode of administering justice. Seventhly and lastly, we proposed that in cases open to second appeal the facts as well as the law should come under review.

"Such were the proposals, and their principles may be summed up thus: First, a second appeal should be shut out when the suit is too trifling in value to justify our bringing three tiers of judicial guns, one being of the largest calibre, to bear upon it; and also when it may be fairly presumed that justice has been done as far as human tribunals can do it. Secondly, that a second appeal may be let in again, when the judge pronouncing the second decree thinks that it should be, when the money-value of the suit is no measure of its importance, and when its interest to others compensates for its want of value to the parties, and again when the presumption that justice has been done is rebutted by other circumstances. Thirdly, that parties should not be judges in their own cases, but that the Courts should judge for them under which class they fall.

"There was one other part of our measure, as it was introduced, which dealt with appeals from original decrees. It was proposed to prohibit such appeals in cases of the Small Cause type decided in the ordinary Courts, when the value did not exceed Rs. 20, but subject to the same safeguards and qualifications as affected the prohibition of second appeals.

"Now I come to the comments which have been made upon these proposals, principally in three memorials; one proceeding from the British Indian Association, one from the Rájsháhai Association, and one from the Pleaders of the High Court, communicated in a letter from Mr. Allan to myself. I may here mention that I am indebted to Mr. Allan for advice and assistance in framing the illustrations which we have added to the Bill.

"I have already stated that in my opinion the memorialists have fallen into some errors. But I should add that their language is temperate and their

arguments perfectly fair and straightforward. As for mistakes, if I succeed in showing that there are such, I repeat that the subject is one of much complication and difficulty. I have had to go over it several times, yet often find myself falling into mistakes about it; and it is not surprising if others who are going over it for the first time should make some too.

"Before I apply myself to the points which are properly in issue between us, let me first clear off one or two matters about which no controversy was raised by me or need now be raised.

"One of these matters is the assumption that part of the ground-work of this measure is an attempt to repress an over-litigious spirit peculiar to the Bengalees. The British Indian Association say—

"'It is, your memorialists believe, *generally supposed* that the people of this country are fond of appeals, and that the greater the number of appeals the more are they apt to have recourse to them.'

"The Rájshahai Association come to closer quarters, and they say—

"'But it seems that the honourable mover of the Bill thinks that they [the mischiefs] are attributable to a morbid litigious tendency in the people of these provinces; it is accordingly proposed to make changes curtailing the power of appealing with a view to discourage this tendency.'

"And both the Associations set themselves to prove in detail that the fact is not as supposed.

"Now this assumption has led to some very interesting statements and reasoning on the part of the two Associations, but it is nevertheless an erroneous assumption. Whatever may have been said at different times about an exceptionally litigious spirit in the Bengalees, the reasons for this measure stand as I put them, and are quite independent of any opinion about the existence of such a spirit. And as regards my own proper self, I have not only not rested the case on any such opinion, but having seen such an opinion expressed in several of the papers before Government, I have carefully abstained from saying a word about it. I have so abstained for two reasons. First, I have a lawyer's weak fondness for evidence and have not found sufficient proof of the fact: indeed, according to my experience, human nature in Bengal seems exceedingly like human nature elsewhere. And secondly, if I were convinced of the fact, I should be slow to draw the supposed inference from it. I should doubt whether it was wise to frame institutions with the view of running directly counter to the spirit of the people in such a matter as this. And I am glad to find that, according to the evidence of these

Associations, there is no unreasonable passion for litigation in the people of Bengal, but that they are likely to be satisfied with a reasonable amount of judicial power to settle their disputes.

"These observations bring me to a matter which is akin to them. Some of the memorialists have pointed out that (I am now reading from the memorial of the Rájshahai Association)

"'the object of Courts, in the humble opinion of your Excellency's memorialists, seems to be, not only the granting of relief in disputes that actually occur, but also the creation of a general satisfaction in the minds of the people as a whole.'

"In that sentiment I most cordially concur. It has formed part of my argument throughout. I have insisted that disputes have their public as well as their private side, and that we must make laws, not for disappointed litigants alone, but for the whole community. If I may quote my own words, I spoke, among other things, as follows:—

"'The State's duty is to provide such reasonable amount of judicial machinery as may satisfy reasonable people that their cases have been fully and fairly heard, even if erroneously decided, so that they may not be driven to take the law into their own hands. When that duty has been discharged, we may apply the maxim, *Expedit reipublicae ut sit finis litium.*'

"But all that is proved by such a principle is that we should get the best judicial machinery that our circumstances require and admit of. It leaves quite untouched the main questions—What do circumstances admit of? What do they require? What is the best judicial machinery? What is most likely to create that general satisfaction which we all agree in desiring? All these questions may, consistently with the principle just admitted, be answered in ways that are favourable to the Bill before the Council.

"There is again another matter, one of great importance, which is common ground between myself and the memorialists. They insist very strongly on the necessity of improving and strengthening the Mofussil Courts. It is no doubt a most important subject; far more important than any contrivances whatever about appeals. When I addressed the Council last June, I expressed my own opinion as clearly and strongly as I could to that effect, and though it is true that I was speaking principally of Courts of First Instance, my remarks were also applicable to, and intended for, Courts of First Appeal. But how to do it? Aye, there's the rub. We must always remember that our grand difficulty is the paucity of trained and fit men for the post of Judge—a difficulty which cannot be overcome in a year, nor yet in a generation in any country, and one which is peculiarly difficult to overcome in the circumstances of this country.

Gradually, as we hear on all hands, the men are acquiring more fitness, and so far so good. Whether we can trust to any other cause of improvement is a grave question. The Pleaders and the British Indian Association do not tell us how they would improve the Courts. The Rájshahai Association do, and I will read their recommendations to the Council:—

"'They would therefore most humbly suggest the following scheme. The special appeals being abolished, the time of the High Court Judges thus saved may advantageously be employed in making circuits for the purposes of sitting with the District Judges to hear such appeals from orders of the subordinate Judges, which are now appealable to the District Judges. The High Court Judges will do this work in the same way as the Judges of the Westminster Courts do Nisi Prius Courts' work in England. In the next place, your Excellency's memorialists would have the appointment of an associate Judge in each District Court for the purpose of sitting with the subordinate Judge or the District Judge in hearing all appeals from the decrees of Munsifs. These associate Judges ought to be selected from among pleaders of position, their salary varying from Rs. 500 to Rs. 1,000 per month. They will be a strong element of the appellate Court, and at the same time be got at a cheap cost. In cases of difference between two Judges hearing appeals, there may be a provision for reference to the High Court without any necessity on the part of the suitor to appeal.'

"Now, I would not make light of either of those proposals. They are well worth considering. I am myself disposed to think favourably of the plan of sending accomplished Judges into the Mofussil, so that they may not only assist in deciding cases of difficulty, but may show, by precept and example, how business should be conducted. But I am not aware that my opinion is largely shared, and there are certainly great practical difficulties about the plan. The Council will observe that these gentlemen combine it with the abolition of special appeals, by which I suppose they mean all second appeals. That is a very radical alteration, and if more efficacious, at all events much fuller of risk, than what we are proposing. As for associate Judges, the irrepressible difficulty recurs—where are the men? If you add to a District Judge a man weaker or no stronger than himself, is it certain that you improve his Court? Is it really true that pleaders of such ability and knowledge and practice as to make them efficient assistants to the District Judges are to be 'got at a cheap cost' or are to be got in sufficient numbers at all? These questions and others would have to be carefully sifted before the suggestions of the Rájshahai Association could be adopted.

"We must remember that this same controversy was raised in the year 1871 when the Bengal Civil Courts Act was passed. It was then said—what is the use of readjusting your judicial arrangements? Shuffling your cards does not make them better ones. The one thing necessary is the improvement of the Judges themselves, and the increase of their strength. The answer

was—that is exactly the thing to which the Government does not see its way: we want much more consideration and delay. Let us make what improvements we can, though they be small ones, and though they do not touch the great and essential foundation of all. I would say the same now:

"Still the matter is one as important as any that can be brought under the consideration of Government, and I feel sure that I am not taking too much upon myself in saying that Government will pay serious attention to it, and that the public owe thanks to those who come forward, as these gentlemen have done, to call attention to it and to suggest remedies in a temperate, thoughtful, and serious spirit. I only wish to add these warnings: don't be blind to the difficulties of the problem; don't put too much faith in arrangements when the thing wanted is a capable man; don't forget that the Government cannot indent for so many good Judges as they can for so many barrels of beer; and don't refuse to consider smaller improvements because you see that greater ones are wanted.

"For, after all, when all this has been said, how does it bear upon the practical question before us, the question whether we shall or shall not accept the present measure? It has no bearing unless you can go on to show that, keeping the Courts as they are now constituted, the proposed alterations are not likely to do good. That is the question to which I addressed myself on former occasions, and I contended, as I contend now, that the scheme of appeal now proposed is sounder in principle, and therefore likely to work better, than that which now exists, and which experience has shown to be highly unsatisfactory.

"When the ground is thus cleared of several topics not in issue now, it will be found that a large portion of the memorials is disposed of; and I proceed to deal with the actual objections that are made to our Bill.

"A considerable portion of the memorial of the British Indian Association is occupied in reviewing what I said concerning the history of appeals; and having shown that many things are different now to what they were in former years, they say that it is—

"'inconsistent to let the present state of things continue, and justify the abolition of special appeals as a matter of right on the assumption that the proposed plan *is nothing more than a restoration of the old system.*'

"Perhaps it would be inconsistent, but no such assumption has been made. All I said to that effect was that it would be more correct to describe this plan as one for restoring special appeals, than to describe it, as had been done, as one

BENGAL SECRETARIAT LIBRARY

for abolishing special appeals. I showed that special appeals, properly so called, had been created in the years 1803 and 1805, had been abolished in the year 1843, though the name was continued, and that they did not now exist; and that under this measure there would be special appeals again. It is a mistake to suppose that I either meant or said that the system now proposed is only a restoration of what existed in former years; it does indeed embrace portions of the former system which was swept away in the year 1843, and the destruction of which has been found so unsatisfactory; but the failure to perceive the points in which the present plan differs from former ones lies, as I think, at the bottom of the objections made by the memorialists.

"I do not go into this subject again at length, because it is mainly of historical interest, though I thought it not useless to give the Council a brief account of the events which have brought us to the point where we stand. That which is really important in the historical retrospect is the proof that at no time have the authorities of British India thought it right to give a second appeal pure and simple. They have always placed large and substantial restrictions on second appeals; and we are not now introducing any new principle of restriction, but are only varying the mode of it. That seems to me important, and I find nothing in the memorial which in the least degree displaces what I have said, or affects the bearing in which I use it. It is the more important, because the British Indian Association now propose (and it is their only proposal)

"'to allow a second appeal to the High Court in all cases both on facts and law, and to add to the numerical strength of that Court in order to enable it to meet the increased business which will necessarily ensue.'

"I think it not an immaterial observation on that proposal to point out that it affords scope to litigation very far greater than ever yet has been contemplated.

"The next topic to which this memorial passes is the bad working of the present system. It quotes with approval some sentences in which I described that working, and then proceeds thus—

"'And the obvious remedy, your memorialists venture to remark, for the state of things described above, is that power should be given to the High Court to open the whole case on second appeal. Such would be the logical sequence of the argument of the learned Law Member. But instead of providing this general remedy, he proposes certain provisions which will practically prohibit a second appeal in the majority of cases which are now open to a special appeal to the High Court, and thus keep out of view the injustice done. A wrong is not righted by simply ignoring it.'

"Now it would have been more correct if the memorial had not said 'instead of providing' this general remedy and so forth, but had said '*while* providing' this general remedy. The very essence of this measure is that it combines provisions for the more complete hearing of second appeals and provisions for letting-in to second appeal important cases which are now excluded from it, with provisions for excluding from second appeal cases of small importance which ought not to come before three successive Courts. The present law aims at doing the same thing, but it does it in a way and on a principle that experience has shown to work badly. It does it by separating law and facts; by putting forcibly asunder things which Nature has joined together; by admitting to second appeal points of law, however trumpery, and excluding questions of fact however important. We propose to aim at it in a different way, taking the distinction, not between law and fact, but between cases of greater and those of less importance. Such a plan as this, whether a wise one or a foolish, is directly addressed to righting the wrong that exists, and when it is described as simply ignoring the wrong, it is not correctly described. Indeed, the next sentence of the memorial shows that the memorialists are sometimes aware that the Bill does throw open to second appeal questions which are now shut out from it; but then they are constantly forgetting it again, as in the passage I have just quoted, and in fact all the important arguments of the memorial read as if the thoughts of its framers were so attracted by those parts of the Bill which are restrictive, that they lose hold of those parts which are enabling.

"Well, they then go on to deal with the limitation of money-value. I will not go again into the argument that one rupee may be as much to a poor man as a million to a rich man. When I hear a serious affirmative answer to my question whether a case about one rupee ought to go up to the Privy Council, I will set myself seriously to deal with it. Until that time arrives, I shall assume that everybody is practically convinced that there is somewhere a point of value too small to be the subject of unlimited appeal; and if so, the only question is, where that point is to be found?

"But the moment we get off this abstract question, I find the memorialists falling into the errors which I say underlie their objections, namely, a forgetfulness of the enabling provisions of the Bill, and of the restrictive operation of the existing law. Of the poor man they say:—

"'To the poor man a suit of, say, rupees 100 or so, covering rights which might have come down to him from generation to generation, which might involve his ancestral homestead, or involve questions of contract, caste or usage that might affect him for life, is of infinitely greater importance than a suit of rupees 10,000 or rupees 1,00,000 in value may be to the rich

man. The latter has always means to cope with his opponent, but the former has no such means, and to deny him the benefit of a Court in which he has, by reason of its constitution, great confidence would be to deny him justice. The deprivation of this right would, your memorialists fear, be attended with great dissatisfaction and discontent.'

"Now just let us analyse that sentence and see how it bears upon the actual measure before the Council and on the existing law. For it will be found that an analysis of this sentence is an analysis of the principal objections of the memorials.

"First, it is said that a suit may involve an ancestral homestead. But I am not content with a general statement like that. What is the kind of question in the suit which the memorialists contemplate? If one of perfect simplicity, why should not two successive Courts suffice to decide it? Why should the High Court be called in to decide it? What does the law say now? A money-suit may be brought before a Munsif, who gives a decree, say, for 100 rupees. That decree is open only to one appeal. Yet such a decree may have the effect, and constantly does have the effect, of depriving the defendant of his ancestral homestead. If execution is issued against him and he has nothing but the homestead to answer it, the homestead must be sold. Is anybody prepared to propose further facility of appeal on account of that incidental result? No, because the nature of the question in which the fate of the homestead is decided is a simple one. Well, then, is it not clear that it is the nature of the question, and not the nature of the property involved, on which the right of appeal is now made to turn? We propose still to make it turn on the same thing, and the argument of the memorialists does not affect us in the least, but flies wide of the mark, until they come to discuss the nature of disputes, and then they must show that the disputes requiring the strongest judicial machinery will be deprived of its aid.

"They deal with the nature of disputes in the immediately succeeding words—'questions of contract, caste or usage that might affect him for his life.' I hardly understand what questions of contract are here referred to, and I think that the observations I have already made about ancestral homesteads apply to the subject of contracts. Some of the disputes about them will, and some will not, be proper subjects for second appeal. Questions of usage are sure to be questions of general interest and they fall within one of our enabling provisions: questions of caste would probably fall within the same provision, and almost certainly within another, because their value is not measurable in money. I think it will be seen that the moment they come down to particulars and try to specify cases in which the 200 rupee limit will work hardship, the memorialists specify cases which the enabling provisions are calculated

to meet; and that it is only as long as they use general terms applying to a vast variety of cases,—such as 'suits involving an ancestral homestead, suits involving questions of contracts' and so forth—that their objections appear to be substantial.

"I may apply the same kind of criticism to every other passage which bears on the 200 rupee limit. I will read one or two of them—

"'In many districts, such as Sylhet, Chittagong, and other places, the land is held in very small parcels, the value of which is generally much less than rupees 200; and as regards those districts, complicated questions of fact and law not unoften arise in suits connected with land, and it would be a gross injustice to them to deprive them of the benefit of the appellate authority of the High Court.

* * * * * *

"'Further, many suits of small value are what may be called test-suits, being tentative in their nature, and it is of the highest importance to the parties concerned that such suits should be decided by the High Court. The provisoes in section 6 will not meet such cases, for the money-value of the particular suit it is not difficult to ascertain, but its ulterior consequences, though not of importance to the general public, are of the last importance to the parties interested, involving a much larger amount than the value of the claim in dispute. Such, for instance, are possession, lákhiráj and easement cases.

* * * * * *

"'In the words of Regulation XLIX of 1803, 'in causes between landholders or farmers of land and the ryots for arrears or exactions of rent, wherein the rights of landlord and tenant might be at issue, an erroneous decision not revocable by law might be of serious ill consequence.' The later laws, as your Excellency in Council is aware, have introduced changes in the status of the landlord altogether inconsistent with the rights and privileges conferred upon him by the Permanent Settlement Regulations, and even the rights recognized by the existing law are sometimes rudely invaded by arbitrary constructions of law. These constructions are not of course confined to the District Courts, but when a case is decided by the High Court the suitor has one satisfaction, that of having laid it before the highest tribunal in the country. But the prohibition under comment would deprive the landholders of even this small satisfaction. In the same way it may be argued on the side of the ryots. Whether it be a dispute between ryot and ryot, or a ryot and a zamíndár, a suit may involve nice questions of law, or a decree passed by the lower Courts may be wholly erroneous or unjust, and it would be a grievous hardship to the ryot, which he would not forget in his life-time, if he were denied the opportunity of obtaining the judgment of the highest Court in the land. The conditions described in section 6 might not apply to cases of this kind. A landlord may bring a test-suit for enhancement, which would affect perhaps a few of the villages of his estate, and he could not then avail himself of the exception as to the importance of a case to the public.'

"Now the Council will observe that in these passages questions of fact and law are mixed up together, and complaint is made that, when complicated, they are not all allowed to go up to the High Court. It is (so they say) a

gross injustice to deprive them of the benefit of the appellate authority of the High Court. But I beg to say that if it be injustice, it is an injustice under which they suffer at present, and under which they have suffered ever since the year 1843. However complicated or important a question of fact may be, however palpably erroneous the appellate judgment of the District Court upon it may be, that judgment cannot be called in question by the High Court. So far from depriving these cases of the appellate authority of the High Court, we are actually devising methods for subjecting them to that appellate authority in a number of instances, we hope in all in which an appeal is really required. As the Bill was introduced, whenever the deciding Judge thought there ought to be an appeal; whenever the High Court thought that a question of public interest was involved, or that the value of the suit was not measurable in money, or that injustice had been done by mistake or judicial misconduct, an appeal might be granted, though no such appeal can now be had. And though we now propose, in one respect, to limit these large enabling provisions in the case of two concurrent decrees, as I shall presently explain, in other respects we propose still further to enlarge them by enabling the High Court to admit an appeal when the record discloses manifest error.

"I find that even the pleaders, versed as they are in legal matters, have not quite escaped the confusion of mixing up cases in which there is now no appeal but under this Bill there will be, with cases in which there is now an appeal and which will be subject to the 200 rupee limit. They say:—

"'The pleaders crave leave also to observe that the difficulties and complications of law and fact and equitable considerations which arise in the determination of suits relating to immoveable property occur in all such cases, more or less, quite irrespective of their pecuniary limit or valuation.'

"Here they speak of complications of fact, as if the present Bill did something to shut them out from appeal, instead of doing a great deal to let them in. As for 'equitable considerations,' I take it they must be either matters of fact or matters of law, and that this Bill does not affect them in any other character.

"Then with regard to what is said of the Permanent Settlement and its rude invasion by arbitrary constructions of law. I really don't know what is meant by these invasions, and it seems to me that the poor Permanent Settlement is constantly made to do a great deal of duty which it never bargained for. But I am sure that any construction of law, arbitrary or otherwise, substantially amounting to an invasion of the Permanent Settlement, would be a

question of the highest public interest, and would, as clearly as any question that can be suggested, fall within one of our enabling provisions.

"So when a suit involves 'nice questions of law,' if those questions are also questions of importance, they will fall within one of the enabling provisions. There may be questions of law which are very nice, but of no importance whatever except to the parties: as, for instance, the construction of a will or a contract. And if they are of none but private importance, why should they not be subject to restrictive rules just as much as questions of fact? Questions of law are not more difficult than questions of fact, but less so. The High Court of Calcutta wrote to us with reference to this Bill thus—

"'An important feature of this Bill is the intended reduction in the number of appeals given as of right. The compensating circumstance, and that which, in the opinion of the Judges, and also it is believed in the estimation of the public, would constitute the great value of the Act if passed, would be that it enabled the High Court to deal effectually with a class of cases which it has hitherto been prevented from reaching, namely, those cases where, although no error has occurred in the decision of any question of law, there has been miscarriage in the application of law to facts, or glaringly wrong and unreasonable inferences have been drawn from the facts themselves. The experience of the Judges tells them that pure mistakes in law are few in comparison with those arising out of imperfect dealing with facts, improper use or appreciation of evidence and failure in procedure.'

"One reason for this, no doubt, is that questions of pure law arise less often than the others; but another is that they are usually less complicated and difficult, and do not require the same grasp or sagacity or training for their solution.

"The reason why questions of law are apt to be more important than those of fact is that they have a general as well as a particular bearing. Take away that generality, and they become as unimportant as questions of fact.

"Again, as regards decrees wholly erroneous or unjust, and as regards test-suits which are mentioned once or twice, they are provided for by the Bill; the former in large measure, and the latter entirely. But it would be unfair to the memorialists if I did not add that, on these two points, the Bill is not now the same as when it was introduced. As to decrees clearly erroneous, we propose to give a much larger measure of discretion to the High Court. And as to test-suits, it was always intended to include them among the enabling provisions, but the language of the Bill was not happily chosen and might fairly raise doubts about the intention—a defect for which I am answerable and which I am glad to have had pointed out.

"Before leaving the subject of the 200 rupees limit, I must notice one other argument, which seems to me rather a strange one. The British Indian Association think that the morals of the people will be corrupted by the temptation to place false valuations on suits in order to bring them beyond the limit in question. How far such a practice would demoralize the people I will not stop to discuss, for I think it will not prevail. It is supposed that people will pay hard money out of their pockets now, because at some future time they may possibly chance to profit by being able to appeal to a higher Court. I say that if Bengális are willing to spend money on such a chance, they must be much more speculative as well as more foolish than other people are, and than I take them to be. To sacrifice the present to a remote and very uncertain future is not so very common anyhow. It is still less common where your enemy is as likely to get the benefit of your sacrifice as yourself, or more so. People who institute lawsuits do so with the expectation of winning, not of losing. And why in the world should a man pay larger court-fees in order that his adversary may be able to dispute the decree he is about to get? When retribution is closing round Macbeth, one of his bitterest reflections is that his crimes have been committed for the benefit of an enemy. 'For Banquo's issue have I 'filed my mind,' he exclaims in his remorse and despair. Equally bitter I should think would be the reflections of a plaintiff who found himself with a decree of the District Judge in his favour, but liable to an appeal to the High Court, because he himself had falsified the value of his suit.

"I pass now to the subject of concurrent decrees, which I may deal with very shortly, because I find no new argument against the principle, except one directed to show that it will seem to reflect upon, and also will demoralize, our Judges. I will read it to the Council—

"'Your memorialists submit it is equally inconsistent to profess confidence in the appellate Court when it agrees with the Court of first instance, and to withdraw that confidence when it disagrees; in other words, to make the judgment of the subordinate Court the criterion of trustworthiness of the superior Court. This half and half confidence, your memorialists respectfully submit, has the appearance of a reflection upon the appellate Courts in the districts. It is observable that the provision will have a demoralizing effect upon the Courts of first instance. Constituted as Mofussil society is, the sympathies and antipathies of the Judges of the District Courts remain no matters of secrecy, and as the prospect of promotion of the subordinate judicial officers depends upon the good-will and recommendation of the District Judges, it would not be unnatural if weak-minded Munsifs should seek to adapt their judgments to the predilections and caprices of the appellate Courts in order to shew a long roll of confirmations of their judgments in appeal. Thus the provision under comment would have a demoralizing tendency and balk the ends of justice.'

"Now I can understand that under all circumstances an inferior Judge may be induced to humour the idiosyncrasies of his superior. But why he should do it the more because the judgments of the superior will be less appealable when they agree with those of the inferior, than when they disagree, it passes my ability to comprehend.

"As to what is said about confidence, I would ask any of these gentlemen what he does in any affair of common life, when two persons, each appointed to pronounce an opinion on some disputed matter and having the best opportunities of forming one, differ about it, does he not feel more doubt than when the same two persons agree? The argument misses the principle on which we defend the finality of two concurrent decrees. We say that, when a man has got a decree in his favour, there is a strong presumption that he is right; that he is in fact right in the great majority of cases; and that when he has got two such decrees, the presumption is much increased; that in fact it has then become so strong that it is wrong to allow him to be further harassed unless you can show that there is something exceptional in the case.

"There are, indeed, the arguments which we have heard before, about the defectiveness of the Courts, and the fear of District Judges affirming decrees indiscriminately in order to escape appeals. The latter argument I answered on a former occasion, showing, conclusively as I think, from other parts of our plan, that a Judge could not, if he would, act in the corrupt way suggested without speedy detection. I do not observe that anything has been said at all weakening or bearing on that answer. And as to the defects of the Courts, I am glad to find that nobody imputes corruption to them; and, failing that, they might be much worse than I believe them to be without destroying the presumptions I have just stated. I believe the Mofussil Courts to consist of gentlemen many of whom are sadly deficient in legal training, but who are men of integrity; the majority of whom are men of good understanding and industry, and the great majority of whom are doing their work as well as they can according to the measure of their several capacities. I say that such men will decide rightly the great majority of cases that come before them. Of course some cases will be too difficult for them, and in others they will make their mistakes, as all of us do in the course of our business. We must remember that even the supremest of Courts are human and will sometimes fall into error. Now let us suppose a case of this kind: a case which contains no point of general interest, in the conduct of which the Judge has acted as a Judge should, the record of which displays no manifest error, and as to which the Judge who decides it feels no such doubt as induces him to think that it should form the subject of a second appeal. I will ask in

how many of such cases is it likely that there will be two successive judgments concurring with one another, and both erroneous? The number must be exceedingly small. I then say that it is our duty to make laws for the good of the community at large; for respondents as well as for appellants; for those who have as well as for those who seek to take away; and for the great majority rather than for the small minority, when their interests are opposed; and that it is a bad law which would allow all successful suitors to be harassed by the unsuccessful, because here and there a mistake may have been made.

"On this principle we have thought it right that two concurrent decrees should not be disturbed merely on account of the importance of the suit to the litigant parties; but that, in order to disturb them, there should be some interest of a general kind; some manifest error; some misconduct in the administration of justice; or some misgiving on the part of the Judge who pronounced the second decree.

"It is true that, in what I call the enabling provisions of our Bill, we do not propose to make the parties the judges in their own cases, whether or no they fall within those provisions. It is for the Courts to say that. But the duty is one which the Courts will doubtless be careful to discharge with impartiality. Certainly the High Court will have no undue bias against appeals, whatever might be the case with the Courts below.

"I have now gone through what strike me as the principal topics relied on in these memorials. There are of course other matters mentioned, but they are minor ones. I hope I have read such passages as give to the Council a fair account of the arguments employed. I have necessarily abbreviated much, but have tried not to garble or misrepresent. If unfortunately I should have done so, these gentlemen are not here to reply upon me,—I wish they were, but we have resolved that their memorials shall be published together with the Bill and our report. The memorials then will receive the same publicity as my remarks; all people may read for themselves; and so my bane and their antidote will go together. If however I have rightly represented the gist of the memorials, then I think I have shown that they do not quite appreciate the contents of this Bill or its relations to the existing law, and that they do exaggerate the mischiefs to be apprehended from it. And I would put it to the memorialists whether, under the light of my remarks, and considering the alterations made in the direction they desire, they are not satisfied to take the reform which everybody advocates, namely, the opening to second appeal of questions of fact, coupled with the other alterations about which controversy exists.

"For myself, I am apprehensive that, as the Bill stands, it may be found to open too wide a door to disputes, and I am sure that for some time it will give the Courts a great deal to do. But I am confident that the principle of classifying suits according to their importance, and not according to the present distinction between fact and law, is a sound one, and will be found to adapt itself both to the present system of Courts and to any other system that may be established for this country. If my confidence is justified, the errors which the wear and tear of practice is sure to expose will be only errors of detail, and may be cured from time to time by us or our successors.

"It only remains to add a few words on the subject of first appeals. We have been induced, partly by the objections I have referred to, partly by the advice of the High Court, to strike out that provision altogether. It has been pointed out to us that the Bengal Civil Courts Act contains a section empowering the Local Government to invest Munsifs with the jurisdiction of Small Cause Courts up to the value of rupees 50. It seems that the power has been little used; so little that for myself I confess it had escaped my notice altogether. If used however, it will prevent appeals below the limit assigned, and the High Court suggest that it may be more used than it has been. It goes to a greater extent than we proposed, because we proposed a limit of rupees 20, and it lacks the qualifications and safeguards which we proposed; but all things considered, we have thought it more prudent to leave the Local Government to apply this machinery when it finds that it may be usefully applied."

His Excellency THE PRESIDENT said that there was no motion before the Council, but if any honourable member desired to make any observations he was perfectly at liberty to do so. Otherwise the course would be that the Report of the Select Committee would be printed and circulated.

PORT-DUES ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues. He said that only yesterday evening a communication was received from the Bengal Government containing some additional suggestions.

Leave was granted.

EUROPEAN BRITISH MINORS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to provide in the Panjáb and elsewhere for the guardianship of European British minors.

DISTRESSES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to regulate Distresses for Rents in the Presidency Towns. He said that with respect to this Bill the Council were obliged to Mr. Fagan, the First Judge of the Court of Small Causes at Calcutta, for the pains he had taken to assist the Committee in improving the Bill.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill for the repeal of certain Obsolete Enactments. He said in this Report the Committee mentioned on the face of it their debt to Mr. Field for most laborious work which he had done in respect of the Bengal Regulations. They had embodied a great portion of that work in the Bill.

LAWS' LOCAL EXTENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to declare and consolidate the law relating to the local extent of the general Regulations and Acts, and the local limits of the jurisdiction of the High Courts and Chief Controlling Revenue Authorities.

GENERAL ACTS' LOCAL EXTENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill for declaring the local extent of certain Acts passed by the Imperial Legislative Council.

NATIVE PASSENGER SHIPS' AND MERCHANT SHIPPING ACT AMENDMENT BILLS.

The Hon'ble MR. HOBHOUSE then moved that the Hon'ble Messrs. Dalyell and Bullen Smith be added to the Select Committee on the following Bills:—

To consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

For the further amendment of Act No. I of 1859 *(for the amendment of the law relating to Merchant Seamen)*, and for other purposes.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 8th December 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 25th November 1874.

Office Supdt. Govt. Printing.—No. 402 L. D.—30-11-74.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 8th December 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q.C.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble R. A. Dalyell.

The Hon'ble Rájá Ramánáth Tagore, C.S.I.

The Hon'ble H. H. Sutherland.

The Hon'ble J. R. Bullen Smith.

EUROPEAN BRITISH MINORS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill to provide in the Panjáb and elsewhere for the guardianship of European British minors be taken into consideration. The Council had learnt, when he moved for leave to introduce the Bill, what the scope and object of it were. With reference to all parts of British India which were under the jurisdiction of the High Courts, there was sufficient power given by the High Courts' Charters, to provide for the guardianship of minors; and with regard to those persons who were not European British subjects, there were several Acts which provided for them. But with regard to those who were European British subjects, and who resided out of the jurisdiction of the High Courts, there was no provision; and cases had arisen lately in the Panjáb which went to show the necessity of making some provision, which the present Bill was intended to do.

He had explained in detail, when he introduced the Bill, the provisions it was intended to make; and he did not think there were any alterations made in the Bill which would induce him to enter into the subject afresh, or

which called for any statement from him now. Hon'ble Members had doubtless read the Report of the Committee. He thought that the only alteration of any importance was this; that, whereas the Bill had proposed to give jurisdiction only to the highest Civil Courts of appeal in each province, and in British Burma to the Recorder of Rangoon, it was represented that the circumstances of British Burma were such as to make it undesirable thus to confine the jurisdiction. It was now proposed that, in Rangoon, the Court should be that of the Recorder, and elsewhere that of the Deputy Commissioner subject to appeal. He wished to add, that the Select Committee were much obliged to the authorities of British Burma, the Judicial Commissioner and Government Advocate, for some very careful and judicious criticisms upon the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRESSES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the consideration of the Report of the Select Committee on the Bill to regulate Distresses for Rents in the Presidency Towns. The two items in the List of Business relating to this Bill had been inserted through a mistake of his. They should not have appeared, because the Select Committee recommended that the Bill should be republished, and then that some little time should elapse before it was passed into law. As, however, the notices were there, he should like to take the opportunity to call attention to the alterations which had been made by the Committee in the Bill, because he found that, when observations were made in Council, they were apt to attract more attention than when the same things were only said in a Committee's Report, and he wanted to call attention to these things in order that those who were interested or affected by them might make any suggestions or objections which might occur to them.

In the first place the Bill excluded from recovery by process of distraint all rent which was due for more than twelve months. It seemed right that if a landlord chose to let his rent run so far into arrear, he should not have the very stringent and summary remedy of distraint, but that he should be put to bring a regular suit for the recovery of such back rents.

In section ten, the Committee had exempted from distraint certain things the seizure of which would be an intolerable hardship, and was calculated to lead to breaches of the peace. They were exempted from seizure under executions, and he believed that in practice they were not usually taken by way of distraint; but there was no positive exemption of them by law, and therefore it was better when we were amending the law to express such exemption. The things exempted were—

"(*a*) things in actual use; or

(*b*) tools and implements not in use; where there is other movable property in or upon the house or premises sufficient to cover such amount and costs; or

(*c*) the debtor's necessary wearing apparel; or

(*d*) goods in the custody of the law."

It would be readily understood that to take a man's coat off his back, or to take the hammer with which he was cobbling a shoe, or the knife and fork with which he was eating his dinner, would be likely enough to lead to a fight.

By sections fourteen and fifteen, some new powers were given to the Small Cause Judges who decided questions directly raised by distraints, to decide other questions which arose out of them indirectly. In section ten, an alteration was made in the law by its being laid down that the property to be taken must be the property of the debtor, so as to prevent the occurrence of those occasional cases of extreme hardship in which the property of somebody against whom the landlord had no claim was taken and sold to answer his claim against his tenant. That alteration was not made by the Select Committee, but was in the Bill when introduced. It would probably increase the number of incidental questions which were intended to be settled under sections fourteen and fifteen.

It was obvious that whenever the things taken were things belonging to the wrong man, or whenever when belonging to the right man they were taken under a process which ought not to have been issued, there might be a claim not only to set aside the proceedings, but to recover compensation for damage done. Mr. Fagan, the first Judge of the Small Cause Court in Calcutta, who had taken great pains in the revision of this Bill, had told us what the present course of proceeding was, and how it might be improved. He would read to the Council what Mr. Fagan said:—

"At present a party who has succeeded in getting a distraint issued against him set aside, immediately issues a summons against the other for damages sustained by reason of the trespass committed against him or his property through the execution of the writ, and this matter has to be investigated in a separate suit, probably by a different Judge, and at any rate at a considerably later date, when the facts, even if inquired into by the same Judge, would not be

so fresh in his recollection or in that of the witnesses. I think the cheap, speedy, and correct decision of such trespass-suits will be much assisted by rendering it compulsory on the party applying to set aside a distraint-warrant to apply at the same time for such damages as he may have sustained in consequence of the trespass."

That seemed a most reasonable plan. It provided that the Court which decided on the propriety of the transaction itself, and was obliged for that purpose to possess itself of the whole case when it was quite fresh, should also say at the same time how the claims which were but the immediate consequences of the transaction should be disposed of. It would probably procure a more satisfactory decision on the point, and it would certainly do away with the circuity and repetition of process which were now necessary. At this moment under a section (88) of the Presidency Small Cause Courts Act (IX of 1850), those Courts had jurisdiction to decide on the claims of third parties in the case of executions. Give them analogous powers in the case of distraints, give them powers of deciding on claims for compensation as well as on claims to the property itself, and the whole matter was likely to be disposed of in a way more economical of the suitor's time and money and more conducive to a just decision.

Those were the principal alterations made by the Bill in the existing law. MR. HOBHOUSE conceived that they would be acceptable, but he thought it much safer that those who were personally interested in the working of the law should have an opportunity of making their remarks before the law was changed.

Leave to postpone the motion was granted.

SCHEDULED DISTRICTS BILL.
LAWS' LOCAL EXTENT BILL.

The Hon'ble MR. HOBHOUSE then moved that the Reports of the Select Committees on the Bill to declare and consolidate the law relating to the local extent of the general Regulations and Acts, and the local limits of the jurisdiction of the High Courts and Chief Controlling Revenue Authorities and the Bill for declaring the local extent of certain Acts passed by the Imperial Legislative Council be taken into consideration. He said—

"It will be convenient if I couple together the two motions which stand fifth and seventh in the paper, and ask the Council to consider at one and the same time the two Reports which are there mentioned. For though the two Bills were not introduced together, they were at first strictly complementary to one another, and they are still cognate; they have run concurrent courses; at one time it was proposed to combine them into one, and though that was after-

wards found not to be so convenient, each has taken certain portions of the other in exchange for portions of its original self.

"My predecessors in this business have, by their speeches in Council and by the papers attached to the Bills, explained very clearly what objects the Bills were intended to compass, and I have before now repeated portions of those explanations. But I think it desirable again to give a brief account of their origin and of their effect, partly because they have been some years upon the stocks, and partly because there has existed a great deal of misapprehension as to the power which they would confer on the Executive Government. In fact, it was supposed by some that, with regard to certain outlying districts which we now call The Scheduled Districts, the Local Governments were to have absolute and unlimited powers of altering the law from time to time by proclamation or similar summary process. So strongly had this notion been rooted, that when in the month of March 1873 I presented a Report of the Select Committee and accompanied it by a statement showing that such a thing was never contemplated, or rather was expressly disclaimed, from first to last, the Government of Bengal sent in a paper saying in effect that the virtue had gone out of the Bills, and that they were no longer likely to do any good. I do not believe that the Government of Bengal remain quite of that opinion now, but that they find on further reflection that the Bills have still some useful work to perform, though of a somewhat humbler nature than was at one time supposed. At all events they have assisted us cordially in bringing them to their present stage of progress.

"Now the state of things which induced Mr. Cockerell to devise these measures was as follows. There are many parts of British India in which it is doubtful whether the general enactments are legally in force or are not. There are places in which those enactments have been put into actual operation, but it has been found difficult to put one's hands upon the express authority for such operation. In others they have not been in operation, but inasmuch as many of them expressly extend to all British India, it is difficult to find a legal answer to the question why they should not operate throughout all parts of British India, however backward or primitive. For some such parts, doubtless, the answer is ready to hand in the shape of a special and recent deregulationizing Act; but for others it has to be sought for by much research, and for some it may not be forthcoming at all.

"Now this confusion, which might lead to difficulty in other places, actually did lead to difficulty in the district of Dehra Dún. After its annexation to the British Empire, that district underwent several changes of law. From the

year 1827 onwards it was considered that the district fell within the general Regulations, and on that footing it was governed for the space of some forty years, all except a wild and primitive part of it called Jaunsar Báwar. Then a litigation occurred in which one of the parties took an objection resting on the ground that the Regulations had never been legally introduced into the district at all, and upon argument the High Court held that they had not. An Act of Council (Act XXI of 1871) was then passed for the purpose of giving validity to all the judicial and other proceedings which had taken place on the erroneous hypothesis throughout all the district except Jaunsar Báwar, and for extending the general Acts and Regulations to the same area.

"Now the occurrence of this case led Mr. Cockerell to consider whether we could not usefully frame a general enactment obviating most of such difficulties beforehand, or providing simple means for their solution upon their first appearance. He also found, on considering the subject, that in several other respects the law might usefully be simplified.

"There are a number of enactments which do not carry on their face any express mention of their local extent, but leave that extent to be gathered from their origin and nature. All these Acts he proposed to lay hold of and to declare what their extent was, according to the actual intention.

"Other enactments are expressly limited to certain localities, but are made extendible to other localities by proclamation or some proceeding of the Executive: and many of them have been actually extended in the prescribed way. Other enactments, again, known as deregulationizing Acts, have been passed for the purpose of removing from the operation of the general Acts and Regulations certain districts which were too backward to benefit by them, and of giving large powers of administration to the Executive in those districts. These two classes of enactments and the proclamations issued under the former class, he proposed to consolidate by the simple process of framing tables showing how far each enactment extends, when its extent does not appear upon its face, and of repeating once for all the power of the Executive over the deregulationized districts.

"It was for these objects that, in the years 1870 and 1871, Mr. Cockerell introduced into Council the two Bills which now are represented by what we call the Scheduled Districts Bill and the Laws Local Extent Bill. The Council will observe that the objects are threefold.

"*First*—the Bills have a declaratory operation; that is to say, either by their own force, or by means of a power given to the Executive, they propose to

declare what the written law is in those parts of the country as to which doubts exist.

"*Secondly*—they have an extending operation; that is to say, by their own force they extend enactments to localities in which they are undoubtedly at work, but in which their operation may have a doubtful legal foundation, as in the instance I have mentioned; and by means of a power vested in the Executive enactments current in other parts of India may be extended to the Scheduled Districts as they are wanted.

"*Thirdly*—they have a consolidating operation; that is to say, they bring into one focus the various deregulationizing Acts and the various extending Acts and the proclamations consequent upon them. I think Mr. Cockerell calculated that, by this process, he could repeal, partially or wholly, some seventy enactments. We propose to repeal forty-three wholly, and parts of four more; but a good many repeals which Mr. Cockerell contemplated four or five years ago have been effected by subsequent legislation.

"Now in all this the Council will observe that there is no change of the law actually at work, except so far as it is a change to give in general terms powers which have been given in a number of specific instances, in fact in every instance in which territories have been deregulationized, and which are exercised in territories which never have been subjected to the general Acts and Regulations: and so far as it is a change to give an express legal foundation to that system which is being actually administered under the belief that it is law, but the legal foundation of which may not exist, or not be capable of proof. There is no hint here of the scheduled districts being a *tabula rasa* on which the Executive may inscribe any law it thinks proper, without reference to the fact whether that law has or has not been working in the locality, and may alter that law from time to time under the guise of a declaration. Such a proposal as that would be rather a strain on the legislative powers given to this Council, and I doubt whether, if it were made, the Council would pass it or the Crown assent to it.

"Well, as the matter proceeded, it was found to be extremely complicated, not only on account of the confusion I have mentioned between full legislative powers and the powers first of ascertaining and declaring actual law, and then of extending enactments current in other parts of India; but also on account of the multitudinous details which had to be attended to. The amount of labour imposed on the members of the Select Committees and on the local authorities who have attended to the formation of the schedules

has been very great. I hope the principal difficulties have been now overcome, though in one or two respects we have found them too much for us, and have therefore abandoned some portions of Mr. Cockerell's original plan, which I will mention.

"As the Bills were originally framed, they proposed to define, not only the local limits of Acts and Regulations, but also those of the High Courts and Revenue Authorities. This was found to be almost impossible, except by using very general terms, which, it was pointed out to us, were calculated to introduce as many difficulties as they removed; so after two or three attempts we gave up the task. The present Bills say nothing about those authorities in a direct way, though, of course, by prescribing the local limits of enactments they will indirectly prescribe the limits within which High Courts and Revenue Authorities are to exercise portions of their jurisdiction.

"Again, we found that the legal difficulties were still further complicated by a cross thread of political manufacture. Every Member of Council knows that, in the course of building up this empire, we have acquired territories and powers in infinitely various ways; that we stand to Native Rulers in infinitely various relations; and that their connection with us has infinitely various degrees of approachment, shading off from absolute political incorporation to independence of everything except the Paramount Political Power necessary for preserving the peace and unity of the country. It is not very surprising then that, on examining the lists of the places to which it might *primâ facie* be thought proper to apply such a measure as this, it should be found that some were not ripe for it; indeed, that as to some it might even be doubted whether or not they had become integral parts of British India as distinguished from India. All places under such conditions as these have now been omitted from the schedules, and their status, legal and political, remains wholly untouched by what is now being done. In our Report on the Scheduled Districts Bill we have stated that the measure is, in this respect, imperfect; but that we must leave it so on account of the practical difficulties which might arise in a number of small territories.

"With these exceptions, however, we have adhered steadily to the main lines laid down by Mr. Cockerell when he introduced the Bills, and by Mr. Stephen when he presented the first report of the Committee in the year 1872; and I will now show the way in which the Bills meet the various objects of declaration, extension and consolidation.

"I first take the Scheduled Districts Bill, and beginning at the wrong end, that is to say, at the last section, I call attention to the fact that we are not

dealing with anything but written law—'law contained in Acts and Regulations.' The common law of the country—whatever law is established by custom or usage, remains wholly untouched by anything in this Bill. Again, we do not touch the subject of criminal jurisdiction over European British subjects. That is altogether a separate matter, about which there are special rules, attended, so far as I know, by no legal difficulties, and not calling for any interference such as we are now applying to other departments of law and administration.

"Going back to the beginning of the Bill, I pass over the preamble with the single observation that it now shows that the territories which we call the Scheduled Districts are not the whole, but only parts, of those tracts of British India in which the general Acts and Regulations are not at work. I also pass over section 1 with the observation that, under the term 'Scheduled Districts,' we propose to include, not only those territories which are now specified in the schedule, but also all those which are placed in the very exceptional position of having the Statute 33 Vic., cap. 3, applied to them.

"The most important provisions of the Bill are to be found in sections three and five. Section three runs thus—

"'The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the *Gazette of India* and also in the local Gazette, (if any)

"'(*a*) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such District,

"'(*b*) declare of any enactment that it is not actually in force in any of the said Districts or in any part of any such District,

"'(*c*) correct any mistake of fact in any notification issued under this section:

"'Provided that a declaration once made under clause (*a*) or clause (*b*) of this section shall not be altered by any subsequent declaration other than a declaration under clause (*c*) of this section.'

"Now I hope that makes it clear that it is not intended to confer on the Executive a general legislative power, but only a power of declaring what the law actually is. That power should be exercised as occasion calls for it. I will again illustrate my meaning by referring to the actual case of the Dehra Dún.

"Suppose that the question which then arose had arisen immediately after this measure had passed into law. What would the facts be? The Government would find that for forty years the general Acts and Regulations had been at

work in the more civilized parts of the district; and that whether there had ever been any sufficient legal authority for setting them to work was a doubtful question, only to be solved after a minute examination into the history of the district, and even then probably susceptible of different answers. Again, in the Jaunsar Báwar they would find that the general Acts and Regulations were not at work; and that the same sort of question existed whether they ought not to be put in operation there. Now I take it that, under the provisions of this Bill, it would be quite competent to the Government to say—'For Jaunsar Báwar we declare that the general Acts and Regulations are not in force, and for the rest of the district we declare that they are in force: as to the questions of strict legal origin, they are precisely the knots which this Act was intended to cut; we do not trouble ourselves to untie them, nor is it our business to do so; we are content to declare in favour of those systems on which the country has been governed for forty years.' It is in fact for cutting Gordian knots of this description that section three of the Bill is intended. But knots, in order to be cut, must exist, and it is not meant that the Government should declare the existence of any system which has no existence *de jure* or *de facto*, and as to which no question has arisen.

"Section four only makes the declaration, when made, conclusive as to the facts contained in it: a provision the necessity for which needs no explanation.

"Section five gives general powers to the Executive to extend to the Scheduled Districts enactments already current in other parts of British India. It is to be expected that these parts of the country will gradually be brought within the operation of the general laws found suitable for the rest of it: but the times for so treating them will be best judged of by the Local Governments. The Council are very familiar with the plan of passing a law for one part only of India, while giving the Executive power to extend it to other parts. Indeed, the consolidation of the very numerous extensions so effected forms a substantial part of the measure now before you. This section gives a similar power in general terms for the districts which, as a regular rule, will be excluded from the Acts we pass for the rest of the country.

"Section six gives powers for the administration of the Scheduled Districts. It runs thus—

"'The Local Government may, from time to time,—

"'(*a*) appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts;

"'(*b*) regulate the procedure of the officers so appointed; but not so as to restrict the operation of any enactment for the time being in force in any of the said districts;

"'(*c*) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed.'

"Those are large powers, but there is nothing new in them. This is one of the matters in which the measure is a consolidating one. These powers are given by the various deregulationizing Acts which we are now repealing; and as to the tracts which have never been brought under the general Acts and Regulations, they are exercised, I believe, with good legal warrant for their exercise, but at all events in fact, whether their legal origin can be strictly proved or cannot.

"Section eight gives power to the Executive to settle doubtful boundaries between Scheduled Districts and others. It is obvious that such questions may arise; and, indeed, the wilder the country, the more likely they are to arise. It is obvious also that a Court of law cannot settle such questions. In all such cases the Executive should intervene; should settle the matter once for all, and so prevent disputes and law-suits.

"Section nine, again, is a consolidating section. I am not sure that it has any legal value, but it is found in some of the Acts we repeal, and is therefore presumably wanted for those tracts to which those Acts relate. It has been in the Bill ever since Mr. Cockerell first introduced it: and though this measure has undergone more repeated and minute criticism from many different quarters than any that I have had to do with, nobody has said anything of this section. We have therefore thought it better that it should remain; and even if it be the case that it only repeats powers otherwise conferred, it will do no harm.

"Now I turn to the Laws' Local Extent Bill. This Bill, as Hon'ble Members will readily see, is of very simple construction. I will read section three which is a key to the whole.

"'The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts.'

"Then turning to the schedules, you will find a list of enactments which, though their local extent is not expressly mentioned on their face, or though on their face they may be limited to some particular locality and only extendible elsewhere by the Executive, are operative throughout the whole of British India, except the backward parts called the Scheduled Districts. Then the four next sections with their corresponding schedules do the same thing for the provinces of Bengal, Madras, Bombay and the North-West.

"By section eight, some precautions are taken against the Act having, or being thought to have, too extensive an operation. It will not, for instance, affect by its own force the extension of an enactment now extendible at the discretion of the Executive, but that discretion will exist as before. And at the end we say that it shall not affect the operation of any enactment not mentioned in any of the schedules. That, perhaps, might seem quite superfluous; but some observations had reached us founded on the notion that an Act not comprised in the first five schedules would be repealed. Those schedules, however, are only intended to comprise those enactments whose local extent is not fully stated on their face. Some enactments are designedly omitted, because for them no such declaration is wanted, and others have probably been omitted by oversight. But when such oversights have happened, there will be no positive harm done; only things will not be bettered, but left precisely as they are now.

"It is indeed impossible to suppose that, in a matter comprising such an enormous mass of detail, errors have not been committed. But such as there are will be soon brought to the surface, and they will be susceptible of a speedy and simple cure. Even allowing a most liberal margin for mistakes, I feel confident that this measure will leave things in a far better state than that in which it finds them, and will prove to be what its authors intended it to be—a material simplification of our written law."

The Hon'ble SIR WILLIAM MUIR and His Honour THE LIEUTENANT-GOVERNOR wished to ask Mr. Hobhouse whether, under section five of the Scheduled Districts Bill, it would be competent to the Executive to extend only portions of particular Acts and Regulations without extending the whole.

The Hon'ble MR. HOBHOUSE answered to the effect that it was so intended; that the word "enactment" had been used here, and was used in previous Acts, as meaning any part of the written law, and as something different from a Regulation or an Act, each of which was an entire thing; that the point had not, so far as he knew, ever been raised in a Court of law; that he could not undertake to say what might be decided, but could only give his own private opinion; and that it was not desirable to alter the language, because such an alteration would immediately throw doubt on similar language used in other Acts.

His Excellency THE PRESIDENT remarked that the question was rather an important one. He understood that the power taken to extend an "enactment" would enable any portion, or certain clauses of an Act or Regulation to be extended.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bills as amended be passed.

The Hon'ble SIR WILLIAM MUIR said that he had come to the Council with the impression that the Bill as now altered should be republished, with the view of obviating any mistakes or omissions which might possibly have occurred in so large a measure. The full explanation now given by the Hon'ble Member in charge had entirely removed this impression and shewn that the Bill might with safety be passed at once.

SIR WILLIAM MUIR added the expression of his high satisfaction at the two Bills being now in a shape to become law. The labour and pains bestowed upon them to reach this successful stage in the midst of so many complications and difficulties, had, he knew from his own experience, been very great. And the thanks of all who had to do with the laws and regulations were due to Mr. Hobhouse, and also to the Select Committee, for the trouble that had been taken in this matter. He was satisfied that by the simplification now introduced, and by the removal of doubts and uncertainties, the administration of business would be materially facilitated.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE also presented the Supplementary Report of the Select Committee on the Bill for the repeal of certain Obsolete Enactments.

This report was made in consequence of what he had mentioned on the last occasion, namely, that the Committee had received a valuable paper from the Bengal Government.

INDIAN LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the Report of the Select Committee on the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority.

Leave was granted.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to amend the law relating to Probates and Letters of Administration, and moved that it be referred to a Select Committee with instructions to report in two months.

In moving for leave to introduce the Bill, he had fully explained its objects, and he now had only to lay before the Council the very simple draft by which it was sought to accomplish them.

Section one was aimed at the principal object, namely, the extension of the area over which a probate should operate. It followed the language of the existing Act (Act X of 1865, section 242), except that, instead of saying that the probate should operate throughout the province in which it was granted, the Bill said it should operate throughout British India.

Section two related to nothing but stamp-duty.

Sections three and four were intended to meet the special cases he had mentioned; those in which, through some mistake, too high a fee had been paid; and those in which fees had been paid for a second grant of probate in respect of the same property. In each of these cases it was proposed that a refund should be made, or that the additional fee should be no longer payable.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the local Gazettes in English and such other languages as the Local Governments might think desirable.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Dalyell be added to the Select Committees on the following Bills:—

To regulate the procedure of the High Courts in the exercise of their Original Criminal Jurisdiction.

To consolidate and amend the law relating to Ports and Port-dues.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Sutherland be added to the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend the law relating to Probates and Letters of Administration,—The Hon'ble Messrs. Bayley, Inglis and Dalyell, and Rájá Ramánáth Tagore and the Mover.

The Council then adjourned to Tuesday, the 15th December 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 8th December 1874.

Office Supdt. Govt. Printing.—No. 437 L. D.—18-12-74.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 15th December 1874.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble John Inglis, C. S. I.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

The Hon'ble J. R. Bullen Smith.

INLAND CUSTOMS BILL.

The Hon'ble MR. ELLIS introduced the Bill for regulating Inland Customs' Duties on Salt and Sugar, and for other purposes, and moved that it be referred to a Select Committee with instructions to report in six weeks. On the 6th of January 1872, nearly three years ago, his hon'ble friend, Sir Richard Temple, asked leave to introduce a Bill for the consolidation of the Inland Customs Law. Leave was given to him at the time by the Council, but up to this date no Bill had been introduced; and MR. ELLIS was now introducing a Bill with that object. The reason for the Bill not having been proceeded with had not been any doubt on the part of the Government as to the expediency of the measure, but the delay was due entirely to other causes. The Government of India had in contemplation some extensive changes in the law of Inland Customs Duties. Those changes resulted in the abolition of the southern portion of the customs-line, for which purpose he had the honour to introduce a Bill into this Council some months ago, which Bill became law as Act X of 1874. He might remark in passing that it would be satisfactory to the Council to know that the measures then taken had turned out to be a financial success, as it undoubtedly was administratively a great measure. For while the Government had saved no less a sum than Rs. 2,30,000 in

reduction of establishments, the loss likely to occur in reduction of duties from the abolition of the customs-line would certainly not have any appreciable effect on the revenue. It would therefore have given him great pleasure had he been able to supplement that measure by another providing for the abolition of the old Regulations regarding the inland customs-line without substituting anything new in their place; or, in other words, abolishing the whole customs-line altogether. But unfortunately the Government was not in a position to undertake so large a measure of reform. And therefore he thought it would be admitted that it was right and proper that the law regarding the inland customs-line should be placed on an intelligible footing. For this purpose he had now to introduce a Bill.

The Bill was one of consolidation in the first place, inasmuch as, whereas the present law was contained in eleven Acts, five Regulations and a vast number of orders which had or were supposed to have the force of law, this one Bill would now sweep away the whole of those with the exception of a portion of one Act; and the law of the future would be contained in the enactment which this Council would, he hoped, agree to pass.

In the matter of improvement, also, there were some things which he should like to mention. As the law stood, the practice was not always fully supported by the law. There were many matters in which the practice that had been in force for years was of doubtful legality. These doubtful points would be cleared up by new definitions and new sections which would settle the law and make it intelligible both to those who administered it and to the public who would be affected by it. There was one section which would give the Executive power to reduce or remit duties—a power which had hitherto been exercised without any special provision of law. Another section would give power to the Executive Government to prohibit the import of salt from one district into any other district—a power which had been exercised in the Panjáb without any legal provision. Another section would give the Executive Government authority to determine what was refined and what was unrefined sugar. This power was one the want of which had been frequently felt. The new Act would further give authority to certain officers of customs to deal with small quantities of articles liable to seizure. This power was now exercised solely by the Commissioners of Land Revenue, even with regard to the most minute quantities of such articles. The consequence was great delay, and a much heavier penalty was thus inflicted than would be inflicted by the mere loss of the quantity of salt or sugar involved in the seizure. Moreover, in regard to penalties and other matters of administration, the regulations in future would take the shape given them in the Excise Act X of

1871, and thereby be made clearer and more uniform and consistent than they hitherto had been.

He believed he had now mentioned the principal alterations that were proposed to be made in the existing law. Those alterations were in matters of detail, and did not involve any important principle. He therefore need not trouble the Council at any length in regard to them. It only remained to mention that he was much indebted to Mr. Batten, the Commissioner of Inland Customs, for the care and thought with which he had elaborated the details embodied in this Bill.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS also moved that the Bill be published in the Gazettes of Bombay, the North-Western Provinces, the Panjáb, the Central Provinces and Oudh.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE moved that the Supplementary Report of the Select Committee on the Bill for the repeal of certain Obsolete Enactments be taken into consideration. He thought he ought rather to move that both the Reports of the Committee be taken into consideration: the former Report was presented a fortnight or three weeks ago. He had explained on two occasions in this Council the principle upon which these Bills were framed, and he thought he need now state no more than that this Bill had been framed on precisely the same principle as the other Bills with which he had to do. The whole effect of the Bill was contained in the schedule, and that was a matter entirely of detail. He could not undertake to go through the schedule to explain exactly what was done, but he assumed that the Council had looked through the Committee's Reports in which the matter was fully explained. The Bill wholly removed from the Statute-book thirty-two Acts and twenty-four Regulations, and also a great number of whole sections of other enactments, and struck out from the remaining Acts and Regulations included in the schedule a good deal which had become dead matter; so that when we came to print a new edition of the Acts, there would be a great deal less matter to deal with than existed now in the Statute-book, and what remained would be clearer and easier to read.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as re-amended be passed.

The Motion was put and agreed to.

PORT-DUES ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues.

NATIVE SOLDIERS' RIGHTS AND LIABILITIES BILL.

Major-General the Hon'ble SIR H. W. NORMAN moved for leave to introduce a Bill to remove doubts as to the rights and liabilities of certain Native Soldiers. He said that Act V of 1869 which constituted the Articles of War for the Native Army of the three Presidencies declared that, whenever any recruit was reported fit for duty, he should be attested; that is to say, he should appear in front of the Regiment, and the Commanding Officer should make such declaration or charge as was usual. The recruit would then make solemn affirmation and declare his fidelity to the Queen and her successors, and that he would proceed wherever he was ordered, and would obey all commands of the officers set over him. It had recently been brought to notice that in certain cases this process of attestation had been omitted. It was believed that this omission was substantially provided for by the application-clause of the Act, which provided that it should apply to all "soldiers, unattested recruits," and other classes specified in the first part of the Act. But in order to remove the possibility of a doubt, it seemed desirable to introduce a Bill framed on the model of the 59th section of the British Mutiny Act, which declared that any person borne on the rolls and who had received pay for six months should be deemed to be duly enlisted, enrolled and attested. This course was in accordance with the recommendation of His Excellency the Commander-in-Chief, and had received the sanction of His Excellency the Governor General, which was required by law in the case of a Bill affecting the discipline or maintenance of the Army.

The Motion was put and agreed to.

BURMA COURTS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Messrs. Inglis and Dalyell be added to the Select Committee on the Bill for the further amendment of the Burma Courts Act, 1872.

The Motion was put and agreed to.

PANJAB LAWS ACT AMENDMENT BILL.

The Hon'ble Mr. Hobhouse also moved for leave to introduce a Bill to amend the Panjáb Laws Act, 1872, and to provide for the establishment of Rural Police in the Panjáb. The Council must not suppose that the Panjáb was now without a rural Police. They had that very necessary appendage to civilized society, and they had that which was, on the whole, a very efficient body; but, like other institutions, it wanted adjusting from time to time. As society grew, its wants varied and had to be met from time to time.

The Council would remember, and his hon'ble friend Sir Richard Temple in particular would remember, that the history of the Panjáb law was a rather curious one: differing from that of the Regulation Provinces considerably. After the acquisition of the Panjáb, the Board of Administration made a number of Regulations: in fact, they established a Code of laws, in the framing of which his hon'ble friend took a most distinguished part. Under the terms of the Acts of Parliament which then gave the power of passing laws for India, some doubts existed whether the Regulations made by the Board of Administration in the Panjáb, from time to time, had a proper legal foundation; and in order to remove all doubts, it was thought proper to apply to Parliament. Accordingly, the Indian Councils' Act provided that, in provinces situated as the Panjáb was, no objection should be taken to the validity of any Regulation merely because the forms required by the Act of Parliament for passing Laws and Regulations had not been observed. It had been held under that law, that all Regulations passed by the Board of Administration of the Panjáb had the force of law, and also that, by its silence and by implication, the Act of Parliament prevented the passing of any such Regulations in future, but referred the Government of the Panjáb to the general legislative power. The consequence was that those institutions which were constituted by the Board of Administration became from that moment solidified; and if they wanted moulding from time to time, the Local Government had to come to this Council for a law. That sudden solidification of a great quantity of Regulations, which, though reduced very much into shape principally by the labours of Sir Richard Temple, yet contained also a great number of informal orders, had the effect of making the law very confused. Mr. Stephen took the matter up and framed a very bold and original and also very useful and successful measure called the "Panjáb Laws Act," for the purpose of ascertaining the law and throwing it into a manageable shape. The Panjáb law now depended partly on the general enact-

ments of the country, and partly on the Panjáb Laws Act. It was not thought at that time that any particular law was wanted for these rural Policemen or Chaukídárs. But the Local Government now found that, although they had a good institution, they required greater powers for dealing with the rural Police: for defining their duties and making different arrangements for more or less populous and wealthy places. That was the reason for the introduction of this Bill. The Council might possibly recollect that MR. HOBHOUSE introduced a Bill for defining the laws in Oudh which was in imitation of Mr. Stephen's Act for the Panjáb. In the Oudh Laws Bill, the Local Government had suggested that they should have full powers for regulating the village Chaukídárs or rural Police. That Bill was referred to the Local Government, who had been considering it for a very long time: and MR. HOBHOUSE was very sorry for the delay. The Council had probably forgotten the details, and he might remind them that in that Bill we proposed to give powers for regulating the rural Police. And now we proposed to do the same for the Panjáb.

His Honour THE LIEUTENANT-GOVERNOR merely desired to say one word in corroboration in regard to the fact that the Panjáb did possess an elaborately constituted rural Police. On the first settlement of the Panjáb the greatest pains were taken to ensure that such an important institution should be provided for the province. Consequently, there were village-watchmen appointed in every village by the Magistrates, and when the settlements came on for revision, the position of these village officials was carefully ascertained by various terms in the deeds of settlement. Their exact mode of remuneration was determined, according either to the custom of the village or the consent of the parties interested—sometimes in grain, sometimes in cash, sometimes in land, and sometimes in a combined remuneration of all three sorts put together. The exact status, legal duties and position of each rural policeman were entered in the administration-papers of the settlement duly attested by the villagers. So that HIS HONOUR had no doubt it would be found that in no part of the country had that very important subject received more detailed attention than in the Panjáb. At the same time he could well understand that, as time went on, considering that everything was now regulated by legal enactment, circumstances might arise in which it was desirable that the Local Government should have the power of regulating by law the status of this most important institution. And therefore he had great pleasure in voting for the introduction of the Bill.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for regulating Inland Customs' Duties on Salt and Sugar, and for other purposes——The Hon'ble Messrs. Hobhouse, Inglis, Dalyell and Bullen Smith and the Mover.

The Council adjourned to Tuesday, the 22nd December 1874.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 15th December 1874.

Offg. Supdt. Govt. Printing—No. 462 L D.—16-12-74.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 22nd December 1874.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
The Hon'ble J. R. Bullen Smith.

PANJÁB LAWS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for the better administration of law in the Panjáb, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that the Council were aware that this Bill related to the rural Police of the Panjáb. He would now point out briefly how the Bill carried into effect the objects which he had mentioned at the last meeting as those for which it was designed. It effected those objects by way of supplementing the Panjáb Laws Act, and contained clauses which should fit into that Act. The principal of these was the clause numbered 39 A, which gave the Local Government power to make a number of rules which, as he had before stated, were necessary in order to adapt the existing system of Police to the exigencies of time and place—rules as to the localities in which watchmen should exercise their powers; as to their several grades and the number of each grade; their appointment, suspension and dismissal; their equipment and discipline, and the power of control over them; as to the rate of their pay, and whether they should be paid out of cesses or funds leviable on villages, or whether by means of some special tax in money or grain to be imposed on persons residing or owning property in the village. There were also two provisoes which were

intended to reserve to the headmen of villages certain powers which they now exercised. In fact the whole of the law and the rules to be made under it were founded on the existing practice. We proposed to continue in the village headmen the power of nomination which they now enjoyed, and the right of stating their views and opinions respecting the cesses and taxes to be levied for the support of the Police. He understood from the Panjáb authorities that that was now done. The villagers were always consulted as to the taxes to be levied for their Police.

Section 39 B placed the village watchmen under the Act in the same position as the general Police in respect of receiving assistance from all Her Majesty's subjects. And section 39 C was intended to provide for those places which were not sufficiently advanced to be erected into municipalities, but which were above the ordinary condition of villages. They went by the name of *kasbahs*, and it was thought that in many of these places it would be good for them if the Police were enrolled under the general Police Act, V of 1861.

All the other sections of the Bill were subsidiary, except the last, which was an amending section, making a small amendment in section 50 of the Panjáb Laws Act. It increased the fine for breaches of certain regulations regarding the track-laws, the slaughter of kine, the entry of armed men and vagrants into towns, and the like, from fifty rupees to three hundred rupees. There was no other material alteration in section 50.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the *Panjáb Gazette* in English and such other languages as the Local Government might think desirable.

The Motion was put and agreed to.

NATIVE SOLDIERS' RIGHTS AND LIABILITIES BILL.

Major-General the Hon'ble SIR H. W. NORMAN introduced the Bill to remove doubts as to the rights and liabilities of certain Native Soldiers, and moved that it be referred to a Select Committee with instructions to report in a month. He said that he had already explained the nature and object of this short Bill. It was therefore unnecessary for him to say any thing more about it at present.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill for the better administration of law in the Panjáb——The Hon'ble Messrs. Inglis and Dalyell and the Mover.

On the Bill to remove doubts as to the rights and liabilities of certain Native Soldiers——The Hon'ble Messrs. Hobhouse and Dalyell and the Mover.

The Council then adjourned to Tuesday, the 5th January 1875.

WHITLEY STOKES,

CALCUTTA; *The 22nd December* 1874. } *Secretary to the Government of India, Legislative Department.*

Office Supdt. Govt. Printing—No. 477 L. D.—23-12-74.—330.